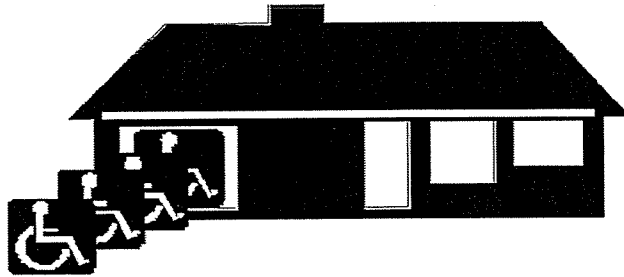


HOUSTON CENTER FOR INDEPENDENT LIVING (HCIL)

POSITION STATEMENT TO THE CITY OF HOUSTON HOUSING AND COMMUNITY DEVELOPMENT COMMITTEE

NOVEMBER 5, 2010



The Houston Center for Independent Living (HCIL) was created by people with disabilities to serve people with disabilities in 1980. HCIL is a self-help, self-advocacy service organization providing assistance and advocacy to and for people with disabilities.

HCIL advocated for the passage of the "Visitability" ordinance passed in 2004. We were also responsible for the creation of the Texas Home of Your Own Coalition that was created to give people with disabilities the opportunity to purchase a home. HCIL has served on the City of Houston Housing Task Force since 1995.

One major barrier to greater independence for people with disabilities is the lack of affordable, accessible housing. The most recent needs assessment conducted by the Houston Housing Authority indicates that there are more than 35,000 families containing one or more people with disabilities that require rental assistance if they had the means to provide it.

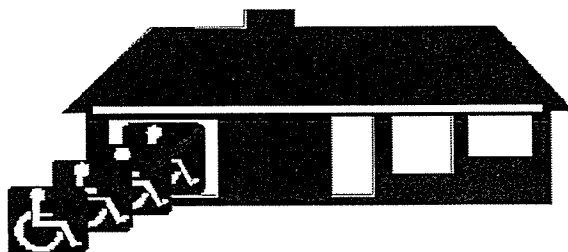
The 2011 Fair Market Rent for a one bedroom apartment is \$767 per month. An SSI recipient receives a maximum of \$674 per month. This amount has not been raised for two years. Plainly there is unmet need for affordable, accessible housing. Even where it might be available, people with disabilities face higher levels of discrimination.

Both locally and nationally, the highest percentage of fair housing complaints come from people with disabilities. Houston does not include people with disabilities as a protected class in their anti-discrimination ordinance, so the city cannot enforce fair housing law.

Our attempts to work with the City and Housing Authority have been largely unsuccessful. Although the Housing Authority applied for, and received "Mainstream" vouchers several times, we still have consumers that were referred in 2004 that have neither been housed nor can the Authority give them their status because of difficulties in managing the Housing Choice Voucher program. In a meeting this spring, they quoted information from a third party agency because they could not verify the number of vouchers in use or the number available. This lack of proper documentation prevented them from applying for funding for more vouchers in July.

In September 2007, the Housing Authority set aside 75 vouchers for use by people with disabilities leaving institutions. Because of delays in processing, a very low number of vouchers were used during the first year. Without notifying us, the Housing Authority cut the number of vouchers to 50. Now, they refuse to process current applications because they have been unable to validate the number being used.

We bring these issues out, not to embarrass or point fingers. Instead, we want to continue to work with the City, with the Housing Authority, and with HUD to address this great barrier preventing the inclusion of people with disabilities in our community. We ask for your support.



PRESS OFFICE

Small Business Jobs Act of 2010

The Small Business Jobs Act, signed by President Obama on September 27, will provide critical resources to help small businesses continue to drive economic recovery and create jobs. The new law extends the successful SBA Recovery loans while offering billions more in lending support and tax breaks for entrepreneurs and small business owners.

New Law Puts More Capital in the Hands of Entrepreneurs and Small Business Owners

- Recovery Act Loans Extension – \$14 billion more in lending support
 - The law will extend SBA Recovery loans (with the 90% guarantee and reduced fees) through December 31, 2010. The \$505 million for Recovery loans in this new law will support about \$14 billion in overall small business lending. More than 1,400 small businesses that have been in a queue waiting for this bill to become law will be funded in a matter of days.
 - Since passage of the Recovery Act, SBA has supported nearly 70,000 Recovery loans, turning \$680 million in taxpayer dollars into more than \$30 billion in lending support.
- Higher Loan Limits – significantly increases maximum loan sizes in top loan programs
 - The law will permanently increase 7(a) and 504 limits from \$2 million to \$5 million (for manufacturers in 504 loan program, up to \$5.5 million).
 - The law will permanently increase microloan limits from \$35,000 to \$50,000, helping larger entrepreneurs with start-up costs and small business owners in underserved communities.
- Alternative Size Standards – more small businesses eligible to get SBA loans
 - The law expands the number of businesses eligible for SBA loans by increasing the alternate size standard to those small businesses with less than \$15 million in net worth and \$5 million in average net income.
- Temporary Enhancements to Help with Working Capital, Commercial Real Estate Refinancing
 - The law will increase maximum amount of SBA Express loans from \$350,000 to \$1 million (expires 9/27/2011).
 - The law will allow some small businesses to refinance their owner-occupied commercial real estate mortgages into the 504 loan program (expires 9/27/2012).
- Dealer Floor Plan Pilot Extension, Expansion
 - The pilot program (begun 2009) will be extended to 2013.
 - After the \$5-million loan limit is implemented, this will help even more small businesses owners who sell cars, RVs, boats, other titleable inventory.
- Small Business Intermediary Lending Pilot
 - The law provides funding for up to \$20 million per year in small business loans over the next three years for an intermediary-facilitated loan program targeting small businesses that need loans up to \$200,000.

New Law Strengthens Small Businesses' Ability to Compete for Contracts, Including Recommendations from the President's Task Force on Federal Contracting Opportunities for Small Business

- Equal Treatment across Federal Contracting Programs

- The law reaffirms “parity” among federal small business contracting programs. Contracting officers will be free to choose among businesses owned by women and service-disabled veterans, as well as those participating in HUBZone and 8(a) programs, and soon the women’s contracting program when conducting contracts that are set-aside for small business.
- Better Playing Field for Small Businesses – more accountability, integrity, transparency
 - The law gives agency procurement officers more ability to provide both large prime contracts and microcontracts to small businesses. The law makes it harder for agencies to “bundle” contracts, a practice that often takes opportunities away from small business. The law also has stronger enforcement so agencies will be held more accountable for reaching small business goals.
 - The law enforces stronger subcontracting plan requirements for large prime contractors to ensure small businesses are utilized in subcontracting. It also discourages late payments to small subcontractors.
 - The law enforces SBA’s continuing efforts to combat fraud, waste, and abuse. Federal agencies, including the Department of Justice, will have more ability to vigorously pursue companies that win contracts by misrepresenting their small business status.
- Small Business Teaming Opportunities
 - The law provides \$25 million for a new pilot that provides grants that will help small businesses team up with each other to compete for larger and more complex federal government contracts.

New Law Promotes Small Business Exporting, Building on the President’s National Export Initiative

- Export Express Pilot Becomes Permanent
 - The law turns the Export Express pilot loan program into a permanent program with 90% guarantees for loans up to \$350,000 and 75% for loans between \$350,000 and \$500,000.
- State Trade and Export Promotion Grants Pilot
 - The law provides \$90 million in competitive grants over next three years for states to help small business owners with exporting.
- Increased Staff and Strengthened Export Counseling Resources.

Law Expands Training and Counseling:

- Major Investment in Counseling and Training
 - The law provides \$50 million in grants available to Small Business Development Centers.
- More Opportunities in Export Counseling (see above)

New Law Provides \$12 Billion in Tax Relief to Help Small Businesses Invest in their Firms, Create Jobs

- Extension, Expansion of Tax Cuts – 8 Tax Cuts
 1. The highest small business expensing limit ever, of \$500,000
 2. Carry-back provisions on net operating losses of up to 5 years
 3. Accelerated/bonus depreciation
 4. Zero capital gains taxes for those who invest in small businesses
 5. Increased deductions for start-ups
 6. Deductions for employer-provided cell phones
 7. Deductions for health insurance costs for the self-employed
 8. Limitations on penalties for errors in tax reporting that disproportionately affect small business

Beyond SBA:

- Small Business Lending Fund – \$30 billion (administered by Treasury)
 - The law will provide smaller community banks with low cost capital (as low as 1%) if they go above and beyond 2009 small business lending levels.
- Establishes State Small Business Credit Initiative (administered by Treasury)
 - The law will provide up to \$1.5 billion to States to support state run small business lending programs.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Fort Worth Regional Office, Region VI
Office of Fair Housing & Equal Opportunity
801 Cherry Street, PO Box 2905
Fort Worth, TX 76113-2905
Phone: 1-888-560-8913 - Fax (817) 978-5876
www.hud.gov

OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

HUD's Office of Fair Housing and Equal Opportunity (FHEO) is responsible for the enforcement of the Federal Fair Housing Act (42 USC 3601). This Act prohibits discrimination in the sell, rental, financing and insuring of residential properties. Discrimination is prohibited on the bases of race, color, religion, sex, national origin, familial status, and disability. Persons who believe that they have been discriminated against may file complaints with FHEO. Upon receipt of a complaint, FHEO will conduct an investigation to determine whether or not there is reasonable cause to believe the complainant had been discriminated against. During this process, FHEO will also seek to resolve the issues of the complaint. In the event a resolution is not reached, FHEO will issue a determination. If the evidence does not support the complainant's allegations, the case is dismissed. The complainant retains the right to file a private action in Federal District Court. If the evidence supports a finding that there is reasonable cause to support the complainant's allegations, HUD will issue a Charge of Discrimination against the named respondents. HUD will proceed to litigate the case before a HUD Administrative Law Judge. Once the Charge is issued, either the complainant or the respondent may elect to have the case heard in Federal District Court. If an election is made, HUD will transfer the matter to the U.S. Attorney General.

FHEO is also responsible for assuring that persons are not discriminated against in the housing and community development programs funded by HUD.

FHEO has two funded programs. One is the Fair Housing Assistance Program (FHAP) and the other is the Fair Housing Initiatives Program (FHIP). The FHAP provides funding to State and Local agencies that HUD has certified as having statutes and procedures that are substantially equivalent those of HUD. HUD will refer complaints it receives to these FHAP agencies and take no further action regarding the complaints. FHAP procedures are similar to those that were summarized above. The FHIP program provides funding to qualified agencies to conduct education and outreach activities as well as enforcement related activities such as fair housing testing.

Section 3

What is Section 3?

Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low income residents in connection with projects and activities in their neighborhoods.

How does Section 3 promote self- sufficiency?

Section 3 is a starting point to obtain job training, employment and contracting opportunities. From this integral foundation coupled with other resources

- Federal, state and local programs
- Advocacy groups
- Community and faith-based organizations

comes the opportunity for economic advancement and self-sufficiency.

How does Section 3 promote homeownership?

Section 3 is a starting point to homeownership. Once a Section 3 resident has obtained employment or contracting opportunities they have begun the first step to self-sufficiency.

Remember, "It doesn't have to be fields of dreams". Homeownership is achievable. For more information visit our HUD [website](#).

Who are Section 3 residents?

Section 3 residents are:

- Public housing residents or
- Persons who live in the area where a HUD-assisted project is located and who have a household income that falls below HUD's income limits.

Determining Income Levels

- Low income is defined as 80% or below the median income of that area.
- Very low income is defined as 50% or below the median income of that area.

What is a Section 3 business concern?

A business that:

- Is 51 percent or more owned by Section 3 residents;

- Employs Section 3 residents for at least 30 percent of its full-time, permanent staff; or
- Provides evidence of a commitment to subcontract to Section 3 business concerns, 25 percent or more of the dollar amount of the awarded contract.

What programs are covered?

Section 3 applies to HUD-funded Public and Indian Housing assistance for development, operating, and modernization expenditures.

Section 3 also applies to certain HUD-funded Housing and Community Development projects that complete housing rehabilitation, housing construction, and other public construction.

What types of economic opportunities are available under Section 3?

- Job training
- Employment
- Contracts

Any employment resulting from these expenditures, including administration, management, clerical support, and construction, is subject to compliance with Section 3.

Examples of Opportunities include:

- | | | |
|------------------------|-------------------------|-----------------------|
| • Accounting | • Electrical | • Marketing |
| • Architecture | • Elevator Construction | • Painting |
| • Appliance repair | • Engineering | • Payroll Photography |
| • Bookkeeping | • Fencing | • Plastering |
| • Bricklaying | • Florists | • Plumbing |
| • Carpentry | • Heating | • Printing Purchasing |
| • Carpet Installation | • Iron Works | • Research |
| • Catering | • Janitorial | • Surveying |
| • Cement/Masonry | • Landscaping | • Tile setting |
| • Computer/Information | • Machine Operation | • Transportation |
| • Demolition | • Manufacturing | • Word processing |
| • Drywall | | |

Who will award the economic opportunities?

Recipients of HUD financial assistance will award the economic opportunities. They and their contractors and subcontractors are required to provide, to the greatest extent feasible, economic opportunities consistent with existing Federal, State, and local laws and regulations.

Who receives priority under Section 3?

For training and employment:

- Persons in public and assisted housing

- Persons in the area where the HUD financial assistance is spent
- Participants in HUD Youthbuild programs
- Homeless persons

For contracting:

- Businesses that meet the definition of a Section 3 business concern

How can businesses find Section 3 residents to work for them?

Businesses can recruit Section 3 residents in public housing developments and in the neighborhoods where the HUD assistance is being spent. Effective ways of informing residents about available training and job opportunities are:

- Contacting resident organizations, local community development and employment agencies
- Distributing flyers
- Posting signs
- Placing ads in local newspapers

Are recipients, contractors, and subcontractors required to provide long-term employment opportunities, not simply seasonal or temporary employment?

Recipients are required, to the greatest extent feasible, to provide all types of employment opportunities to low and very low-income persons, including permanent employment and long-term jobs.

Recipients and contractors are encouraged to have Section 3 residents make up at least 30 percent of their permanent, full-time staff.

A Section 3 resident who has been employed for 3 years may no longer be counted towards meeting the 30 percent requirement. This encourages recipients to continue hiring Section 3 residents when employment opportunities are available.

What if it appears an entity is not complying with Section 3?

There is a complaint process. Section 3 residents, businesses, or a representative for either may file a complaint if it seems a recipient is violating Section 3 requirements are being on a HUD-funded project.

Will HUD require compliance?

Yes. HUD monitors the performance of contractors, reviews annual reports from recipients, and investigates complaints. HUD also examines employment and contract records for evidence that recipients are training and employing Section 3 residents and awarding contracts to Section 3 businesses.

How can Section 3 residents or Section 3 business concerns allege Section 3 violations?

You can file a written complaint with the local HUD Field Office or mail it to:

The Assistant Secretary for Fair Housing and Equal Opportunity
Attn: Office of Economic Opportunity
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W.,
Room 5100
Washington, D.C. 20410-2000

A written complaint should contain:

- Name and address of the person filing the complaint
- Name and address of subject of complaint (HUD recipient, contractor or subcontractor)
- Description of acts or omissions in alleged violation of Section 3
- Statement of corrective action sought i.e. training, employment or contracts

Title VI of the Civil Rights Act of 1964

24 CFR Part 1

PART 0—STANDARDS OF CONDUCT

§ 0.1 Cross-reference to employees ethical conduct standards and financial disclosure regulations.

Employees of the Department of Housing and Urban Development (Department) are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635, the Department's regulation at 5 CFR part 7501 which supplements the executive branch-wide standards, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

5 U.S.C. 301, 7301; 42 U.S.C. 3535(d)

[61 FR 36251, July 9, 1996]

PART 1—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

- 1.1 Purpose.
- 1.2 Definitions.
- 1.3 Application of part 1.
- 1.4 Discrimination prohibited.
- 1.5 Assurances required.
- 1.6 Compliance information.
- 1.7 Conduct of investigations.
- 1.8 Procedure for effecting compliance.
- 1.9 Hearings.
- 1.10 Effect on other regulations; forms and instructions.

AUTHORITY: 42 U.S.C. 2000d-1 and 3535(d).

SOURCE: 38 FR 17949, July 5, 1973, unless otherwise noted.

§ 1.1 Purpose.

The purpose of this part 1 is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the *Act*) to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development.

§ 1.2 Definitions.

As used in this part 1—

(a) The term *Department* means the Department of Housing and Urban Development.

(b) The term *Secretary* means the Secretary of Housing and Urban Development.

(c) The term *responsible Department official* means the Secretary or, to the extent of any delegation of authority by the Secretary to act under this part 1, any other Department official to whom the Secretary may hereafter delegate such authority.

(d) The term *United States* means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term *State* means any one of the foregoing.

(e) The term *Federal financial assistance* includes: (1) Grants, loans, and advances of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. The term *Federal financial assistance* does not include a contract of insurance or guaranty.

(f) The term *recipient* means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program or activity, or who otherwise participates in carrying out such program or activity (such as a redeveloper in the Urban Renewal Program), including any successor, assign, or transferee thereof, but such term does not include

§ 1.3

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any ultimate beneficiary under any such program or activity.

(g) The term *applicant* means one who submits an application, contract, request, or plan requiring Department approval as a condition to eligibility for Federal financial assistance, and the term *application* means such an application, contract, request, or plan.

§ 1.3 Application of part 1.

This part 1 applies to any program or activity for which Federal financial assistance is authorized under a law administered by the Department, including any program or activity assisted under the statutes listed in appendix A of this part 1. It applies to money paid, property transferred, or other Federal financial assistance extended to any such program or activity on or after January 3, 1965. This part 1 does not apply to: (a) Any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended to any such program or activity before January 3, 1965, (c) any assistance to any person who is the ultimate beneficiary under any such program or activity, or (d) any employment practice, under any such program or activity, of any employer, employment agency, or labor organization, except to the extent described in § 1.4(c). The fact that certain financial assistance is not listed in appendix A shall not mean, if title VI of the Act is otherwise applicable, that such financial assistance is not covered. Other financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

§ 1.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity to which this part 1 applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program or activity to which this part 1 applies may not, directly or through contractual or other arrangements, on

the ground of race, color, or national origin:

(i) Deny a person any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(ii) Provide any housing, accommodations, facilities, services, financial aid, or other benefits to a person which are different, or are provided in a different manner, from those provided to others under the program or activity;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(iv) Restrict a person in any way in access to such housing, accommodations, facilities, services, financial aid, or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(v) Treat a person differently from others in determining whether he satisfies any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(vi) Deny a person opportunity to participate in the program or activity through the provision of services or otherwise, or afford him an opportunity to do so which is different from that afforded others under the program or activity (including the opportunity to participate in the program or activity as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2)(i) A recipient, in determining the types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided under any such program or activity, or the

class of persons to whom, or the situations in which, such housing, accommodations, facilities, services, financial aid, or other benefits will be provided under any such program or activity, or the class of persons to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect to persons of a particular race, color, or national origin.

(ii) A recipient, in operating low-rent housing with Federal financial assistance under the United States Housing Act of 1937, as amended (42 U.S.C. 1401 *et seq.*), shall assign eligible applicants to dwelling units in accordance with a plan, duly adopted by the recipient and approved by the responsible Department official, providing for assignment on a community-wide basis in sequence based upon the date and time the application is received, the size or type of unit suitable, and factors affecting preference or priority established by the recipient's regulations, which are not inconsistent with the objectives of title VI of the Civil Rights Act of 1964 and this part 1. The plan may allow an applicant to refuse a tendered vacancy for good cause without losing his standing on the list but shall limit the number of refusals without cause as prescribed by the responsible Department official.

(iii) The responsible Department official is authorized to prescribe and promulgate plans, exceptions, procedures, and requirements for the assignment and reassignment of eligible applicants and tenants consistent with the purpose of paragraph (b)(2)(ii) of this section, this part 1, and title VI of the Civil Rights Act of 1964, in order to effectuate and insure compliance with the requirements imposed thereunder.

(3) In determining the site or location of housing, accommodations, or facilities, an applicant or recipient may not make selections with the purpose or effect of excluding individuals

from, denying them the benefits of, or subjecting them to discrimination under any program to which this part 1 applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part 1.

(4) As used in this part 1 the housing, accommodations, facilities, services, financial aid, or other benefits provided under a program or activity receiving Federal financial assistance shall be deemed to include any housing, accommodations, facilities, services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in paragraphs (b) and (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program should take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

Where previous discriminatory practice or usage tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part 1 applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program or activity to which this part 1 applies is to provide employment, a recipient may not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its

§ 1.5

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employment practices under such program or activity (including recruitment or recruitment advertising, employment, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation and use of facilities). The requirements applicable to construction employment under such program or activity shall be those specified in or pursuant to part III of Executive Order 11246 or any executive order which supersedes or amends it.

(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to this part 1 tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this part 1 applies, the provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to this part 1 to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

§ 1.5 Assurances required.

(a) *General.* (1) Every contract for Federal financial assistance to carry out a program or activity to which this part 1 applies, executed on or after January 3, 1965, and every application for such Federal financial assistance submitted on or after January 3, 1965, shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to such contract or application, contain or be accompanied by an assurance that the program or activity will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this part 1. In the case of a contract or application where the Federal financial assistance is to provide or is in the form of personal property or real property or interest therein or structures thereon, the assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the

period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the contract or application. The responsible Department official shall specify the form of the foregoing assurance for such program or activity, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program or activity. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case of real property, structures or improvements thereon, or interests therein, acquired through a program of Federal financial assistance the instrument effecting any disposition by the recipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case where Federal financial assistance is provided in the form of a transfer of real property or interests therein from the Federal Government, the instrument effecting or recording the transfer shall contain such a covenant.

(3) In program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this part 1 shall extend to any facility located wholly or in part in such space.

(b) *Preexisting contracts—funds not disbursed.* In any case where a contract for Federal financial assistance, to carry

out a program or activity to which this part 1 applies, has been executed prior to January 3, 1965, and the funds have not been fully disbursed by the Department, the responsible Department official shall, where necessary to effectuate the purposes of this part 1, require an assurance similar to that provided in paragraph (a) of this section as a condition to the disbursement of further funds.

(c) *Preexisting contracts—periodic payments.* In any case where a contract for Federal financial assistance, to carry out a program or activity to which this part 1 applies, has been executed prior to January 3, 1965, and provides for periodic payments for the continuation of the program or activity, the recipient shall, in connection with the first application for such periodic payments on or after January 3, 1965: (1) Submit a statement that the program or activity is being conducted in compliance with all requirements imposed by or pursuant to this part 1 and (2) provide such methods of administration for the program or activity as are found by the responsible Department official to give reasonable assurance that the recipient will comply with all requirements imposed by or pursuant to this part 1.

(d) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of persons as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such persons, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the bene-

ficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(e) *Elementary and secondary schools.* The requirements of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health and Human Services determines is adequate to accomplish the purposes of the Act and this part 1 within the earliest practicable time, and provides reasonable assurance that it will carry out such plan.

[38 FR 17949, July 5, 1973, as amended at 50 FR 9269, Mar. 7, 1985]

§ 1.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Department official and each Department official who by law or delegation has the principal responsibility within the Department for the administration of any law extending financial assistance subject to this part 1 shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part 1 and shall provide assistance and guidance to recipients to help them comply voluntarily with this part 1.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part 1. In general, recipients should have available for the department racial and ethnic data showing

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the extent to which members of minority groups are beneficiaries of federally assisted programs.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part 1. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part 1 and its applicability to the program or activity under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part 1.

§ 1.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part 1.

(b) *Complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part 1 may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee shall make a prompt investigation whenever a compliance review, report, com-

plaint, or any other information indicates a possible failure to comply with this part 1. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part 1 occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part 1, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by title VI of the Act or this part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 1.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part 1, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part 1 may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law. Such other means may include, but are not limited to: (1) A reference to the

Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 1.5.* If an applicant fails or refuses to furnish an assurance required under § 1.5 or otherwise fails or refuses to comply with the requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph, except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to a contract therefor approved prior to January 3, 1965.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part 1, (3) the action has been approved by the Secretary, and (4) the expiration of 30 days after the Secretary has filed with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in

which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the applicant or recipient. During this period of at least 10 days additional efforts shall be made to persuade the applicant or recipient to comply with this part 1 and to take such corrective action as may be appropriate.

§ 1.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing, or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph (a) or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 1.8(c) and consent to the making

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of a decision on the basis of such information as is available.

(b) *Hearing procedures.* Hearings shall be conducted in accordance with 24 CFR part 180.

[38 FR 17949, July 5, 1973, as amended at 61 FR 52217, Oct. 4, 1996]

§ 1.10 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against persons on the ground of race, color, or national origin under any program or activity to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant or recipient for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to January 3, 1965. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof):

(1) Executive Orders 11246 and 11375 and regulations issued thereunder, or

(2) Executive Order 11063 and regulations issued thereunder, or any other order, regulations or instructions, insofar as such order, regulations, or instructions, prohibit discrimination on the ground of race, color, or national origin in any program or activity or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The responsible Department official shall assure that forms and detailed instructions and procedures for effectuating this part are issued and promptly made available to interested persons.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such department or agency,

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responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 1.10), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of title VI and this part to similar programs or activities and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the responsible official of this Department.

[38 FR 17949, July 5, 1973. Redesignated at 61 FR 52217, Oct. 4, 1996]

PART 3—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

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**Section 109 of Title I of the Housing and
Community Development Act of 1974**

24 CFR 6

24 CFR 570.601 and 24 CFR 570.602

§ 5.2007 Certification of status and confidentiality.

(a)(1) A PHA, owner, or management agent presented with a claim for continued tenancy based on status as a victim of domestic violence or criminal activity related to domestic violence may request that the tenant making the claim certify in a form approved by HUD that the tenant is a victim of domestic violence, dating violence, or stalking, within 14 business days after the date that the tenant receives the request or such longer time as the PHA, owner, or management agent may at its discretion allow. The certification:

(i) May be based solely on the personal signed attestation of the victim under penalties for perjury, as provided in section 1746 of title 28, Judiciary and Judicial Procedure, of the United States Code (28 U.S.C. 1746); or

(ii) May be based on or supported by a federal, state, tribal, territorial, or local police or court record; or

(iii) May be based on or supported by documentation signed by an employee, agent, volunteer of a victim service provider, an attorney, or medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or in addressing the effects of abuse, in which the professional attests under penalty of perjury under 28 U.S.C. 1746 to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; and

(iv) Shall include the name of the perpetrator or alleged perpetrator, if known.

(v) Shall be kept confidential by the PHA, owner, or management agent. The PHA, owner, or management agent shall not enter the information contained in the certification into any shared database or provide it to any other entity, except to the extent that disclosure is:

(A) Requested or consented to by the tenant making the certification, in writing;

(B) Required for use in an eviction proceeding, or

(C) Otherwise required by applicable law.

(2) If the tenant does not provide the certification under paragraph (a)(1) of this section within 14 business days from the date of receipt of the PHA, owner, or management agent's request, or such longer time as the PHA, owner, or management agent at their discretion may allow, the PHA, owner, or management agent may evict the tenant or a family member that commits lease violations that otherwise would constitute good cause to evict;

(3) PHAs must provide notice:

(i) To public housing and Section 8 tenants of their rights under VAWA and this regulation, including the right to confidentiality and the exceptions; and

(ii) To owners and management agents of assisted housing, of their rights and obligations under VAWA and this regulation.

(b) A PHA's, owner's, or management agent's compliance with this section, whether based solely on the tenant's statement or on other corroborating evidence, shall not alone be sufficient to constitute evidence of an unreasonable act or omission by a PHA, PHA employee, owner, or employee or agent of the owner.

§ 5.2009 Effect on other laws.

Nothing in this subpart shall be construed to supersede any provision of any federal, state, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

PART 6—NONDISCRIMINATION IN PROGRAMS AND ACTIVITIES RECEIVING ASSISTANCE UNDER TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

Subpart A—General Provisions**Sec.**

6.1 Purpose.

6.2 Applicability.

6.3 Definitions.

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6.5 Discrimination prohibited—employment.

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Subpart B—Enforcement

- 6.10 Compliance information.
- 6.11 Conduct of investigations.
- 6.12 Procedure for effecting compliance.
- 6.13 Hearings and appeals.

AUTHORITY: 42 U.S.C. 3535(d) 42 U.S.C. 5309.

SOURCE: 64 FR 3797, Jan. 25, 1999, unless otherwise noted.

Subpart A—General Provisions

§ 6.1 Purpose.

The purpose of this part is to implement the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance. Section 109 does not directly prohibit discrimination on the bases of age or disability, and the regulations in this part 6 do not apply to age or disability discrimination in Title I programs. Instead, section 109 directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504) apply to programs or activities funded in whole or in part with Federal financial assistance. Thus, the regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement the Age Discrimination Act for HUD programs, apply to disability and age discrimination in Title I programs.

§ 6.2 Applicability.

(a) This part applies to any program or activity funded in whole or in part with funds under title I of the Housing and Community Development Act of 1974, including Community Development Block Grants—Entitlement, State and HUD-Administered Small Cities, and Section 108 Loan Guarantees;

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Urban Development Action Grants; Economic Development Initiative Grants; and Special Purpose Grants.

(b) The provisions of this part and sections 104(b)(2) and 109 of Title I that relate to discrimination on the basis of race shall not apply to the provision of Federal financial assistance by grantees under this title to the Hawaiian Homelands (42 U.S.C. 5309).

(c) The provisions of this part and sections 104(b)(2) and 109 of Title I that relate to discrimination on the basis of race and national origin shall not apply to the provision of Federal financial assistance to grant recipients under the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4101). See also, 24 CFR 1003.601(a).

§ 6.3 Definitions.

The terms *Department*, *HUD*, and *Secretary* are defined in 24 CFR part 5. Other terms used in this part 6 are defined as follows:

Act means the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301-5320).

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Award Official means the HUD official who has been delegated the Secretary's authority to implement a Title I funded program and to make grants under that program.

Complete complaint means a written statement that contains the complainant's name and address, identifies the Recipient against which the complaint is made, and describes the Recipient's alleged discriminatory action in sufficient detail to inform HUD of the nature and date of the alleged violation of section 109. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Federal financial assistance means: (1) Any assistance made available under title I of the Housing and Community Development Act of 1974, as amended, and includes income generated from such assistance, and any grant, loan,

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contract, or any other arrangement, in the form of:

- (i) Funds;
- (ii) Services of Federal personnel; or
- (iii) Real or personal property or any interest in or use of such property, including:

(A) Transfers or leases of the property for less than fair market value or for reduced consideration; and

(B) Proceeds from a subsequent transfer or lease of the property if the Federal share of its fair market value is not returned to the Federal Government.

(2) Any assistance in the form of proceeds from loans guaranteed under section 108 of the Act, but does not include assistance made available through direct Federal procurement contracts or any other contract of insurance or guaranty.

Program or activity (funded in whole or in part) means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or local government; or

(ii) The entity of a State or local government that distributes Federal financial assistance, and each department or agency (and each State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other post-secondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to the corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any

other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is described in paragraphs (1), (2), or (3) of this definition, any part of which is extended Federal financial assistance.

Recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision; any public or private agency, institution, organization, or other entity; or any individual, in any State, to whom Federal financial assistance is extended, directly or through another Recipient, for any program or activity, or who otherwise participates in carrying out such program or activity, including any successor, assign, or transferee thereof. Recipient does not include any ultimate beneficiary under any program or activity.

Responsible Official means the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee.

Section 109 means section 109 of the Housing and Community Development Act of 1974, as amended.

Title I means title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5321).

§ 6.4 Discrimination prohibited.

(a) Section 109 requires that no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance, on the grounds of race, color, national origin, religion, or sex.

(1) A Recipient under any program or activity to which this part applies may not, directly or through contractual, licensing, or other arrangements, take any of the following actions on the grounds of race, color, national origin, religion, or sex:

(i) Deny any individual any facilities, services, financial aid, or other benefits provided under the program or activity;

(ii) Provide any facilities, services, financial aid, or other benefits that are different, or are provided in a different form, from that provided to others under the program or activity;

(iii) Subject an individual to segregated or separate treatment in any facility, or in any matter of process related to the receipt of any service or benefit under the program or activity;

(iv) Restrict an individual's access to, or enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity;

(v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirements or conditions that the individual must meet in order to be provided any facilities, services, or other benefit provided under the program or activity;

(vi) Deny an individual an opportunity to participate in a program or activity as an employee;

(vii) Aid or otherwise perpetuate discrimination against an individual by providing Federal financial assistance to an agency, organization, or person that discriminates in providing any housing, aid, benefit, or service;

(viii) Otherwise limit an individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other individuals receiving the housing, aid, benefit, or service;

(ix) Use criteria or methods of administration that have the effect of subjecting persons to discrimination or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, national origin, religion, or sex; or

(x) Deny a person the opportunity to participate as a member of planning or advisory boards.

(2) In determining the site or location of housing, accommodations, or facilities, a Recipient may not make selections that have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, national origin, religion, or sex. The Recipient may not make selections that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of section 109 and of this part 6.

(3)(i) In administering a program or activity in which the Recipient has discriminated on the grounds of race, color, national origin, religion or sex, the Recipient must take any necessary steps to overcome the effects of prior discrimination.

(ii) In the absence of discrimination, a Recipient, in administering a program or activity, may take any steps necessary to overcome the effects of conditions that resulted in limiting participation by persons of a particular race, color, national origin, religion, or sex.

(iii) After a finding of noncompliance, or after a Recipient has reasonable cause to believe that discrimination has occurred, a Recipient shall not be prohibited by this section from taking any action eligible under subpart C of 24 CFR part 570 to ameliorate an imbalance in benefits, services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to remedy discriminatory practices or usage.

(iv)(A) Notwithstanding anything to the contrary in this part, nothing contained in this section shall be construed to prohibit any Recipient from maintaining or constructing separate living facilities or restroom facilities for the different sexes in order to protect personal privacy or modesty concerns. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can, in the interest of personal privacy or modesty, only be performed by a member of the same sex as those receiving the services.

(B) Section 109 of the Act does not directly prohibit discrimination on the basis of age or disability, but directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 apply to Title I programs and activities. Accordingly, for programs or activities receiving Federal financial assistance, the regulations in this part 6 apply to discrimination on the bases of race, color, national origin, religion, or sex; the regulations at 24 CFR part 8 apply to discrimination on the basis of

disability; and the regulations at 24 CFR part 146 apply to discrimination on the basis of age.

(b) [Reserved]

§ 6.5 Discrimination prohibited—employment.

(a) *General.* A Recipient may not, under any program or activity funded in whole or in part with Federal financial assistance, directly or through contractual agents or other arrangements including contracts and consultants, subject a person to discrimination in the terms and conditions of employment. Terms and conditions of employment include advertising, interviewing, selection, promotion, demotion, transfer, recruitment and advertising, layoff or termination, pay or other compensation, including benefits, and selection for training.

(b) *Determination of compliance status.* The Assistant Secretary will follow the procedures set forth in this part and 29 CFR part 1691 and look to the substantive guidelines and policy of the Equal Employment Opportunity Commission when reviewing employment practices under Section 109.

§ 6.6 Records to be maintained.

(a) *General.* Recipients shall maintain records and data as required by 24 CFR 91.105, 91.115, 570.490, and 570.506.

(b) *Employment.* Recipients shall maintain records and data as required by the Equal Employment Opportunity Commission at 29 CFR part 1600.

(c) Recipients shall make available such records and any supporting documentation upon request of the Responsible Official.

(Approved by the Office of Management and Budget under control numbers 2506-0117 and 2506-0077)

Subpart B—Enforcement

§ 6.10 Compliance information.

(a) *Cooperation and assistance.* The Responsible Official and the Award Official will provide assistance and guidance to Recipients to help them comply voluntarily with this part.

(b) *Access to data and other sources of information.* Each Recipient shall permit access by authorized representatives of HUD to its facilities, books,

records, accounts, minutes and audio tapes of meetings, personnel, computer disks and tapes, and other sources of information as may be pertinent to a determination of whether the Recipient is complying with this part. Where information required of a Recipient is in the exclusive possession of any other agency, institution, or person, and that agency, institution, or person fails or refuses to furnish this information, the Recipient shall so certify in any requested report and shall set forth what efforts it has made to obtain the information. Failure or refusal to furnish pertinent information (whether maintained by the Recipient or some other agency, institution, or person) without a credible reason for the failure or refusal will be considered to be non-compliance under this part.

(c) *Compliance data.* Each Recipient shall keep records and submit to the Responsible Official, timely, complete, and accurate data at such times and in such form as the Responsible Official may determine to be necessary to ascertain whether the Recipient has complied or is complying with this part.

(d) *Notification to employees, beneficiaries, and participants.* Each Recipient shall make available to employees, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the program or activity under which the Recipient receives Federal financial assistance and make such information available to them in such manner as the Responsible Official finds necessary to apprise such persons of the protections against discrimination assured them by Section 109 and this part.

§ 6.11 Conduct of investigations.

(a) *Filing a complaint—(1) Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this part may file, or may have an authorized representative file on his or her behalf, a complaint with the Responsible Official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or who is the authorized representative of a member of that class

may file a complaint with the Responsible Official.

(2) *Confidentiality.* Generally, the Responsible Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise. However, an exception to maintaining confidentiality of the identity of the person may be required to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination, unless the Responsible Official waives this time limit for good cause. For purposes of determining when a complaint is filed under this part, a complaint mailed to the Responsible Official via the U.S. Postal Service will be deemed filed on the date it is postmarked. A complaint delivered to the Responsible Official in any other manner will be deemed filed on the date it is received by the Responsible Official.

(4) *Where to file complaints.* Complaints must be in writing, signed, addressed to the Responsible Official, and filed with (mailed to or otherwise delivered to) the Office of Fair Housing and Equal Opportunity at any HUD Office.

(5) *Content of complaints.* Each complaint should contain the complainant's name, address, and phone number; a description or name, if available, of the Recipient alleged to have violated this part; an address where the violation occurred; and a description of the Recipient's alleged discriminatory action in sufficient detail to inform the Responsible Official of the nature and date of the alleged violation of this part.

(6) *Amendments to complaints.* Amendments to complaints, such as clarification and amplification of allegations in a complaint or the addition of other Recipients, may be made by the complainant or the complainant's authorized representative at any time while the complaint is being considered, and any amendment shall be deemed to be made as of the original filing date.

(7) *Notification.* To the extent practicable, the Responsible Official will notify the complainant and the Recipient

of the Responsible Official's receipt of a complaint within 10 calendar days of receipt of a complete complaint. If the Responsible Official receives a complaint that is not complete, the Responsible Official will notify the complainant and specify the additional information that is needed to make the complaint complete. If the complainant fails to complete the complaint, the Responsible Official will close the complaint without prejudice and notify the complainant. When a complete complaint has been received, the Responsible Official, or his or her designee, will assess the complaint for acceptance, rejection, or referral to an appropriate Federal agency within 20 calendar days.

(8) *Resolution of complaints.* After the acceptance of a complete complaint, the Responsible Official will investigate the complaint, attempt informal resolution, and, if resolution is not achieved, the Responsible Official will notify the Recipient and complainant, to the extent practicable within 180 days of the receipt of the complete complaint, of the results of the investigation in a letter of findings sent by certified mail, return receipt requested, containing the following:

(i) Findings of fact and a finding of compliance or noncompliance;

(ii) A description of an appropriate remedy for each violation believed to exist; and

(iii) A notice of the right of the Recipient and the complainant to request a review of the letter of findings by the Responsible Official. A copy of the final investigative report will be made available upon request.

(b) *Compliance reviews*—(1) *Periodic compliance reviews.* The Responsible Official may periodically review the practices of Recipients to determine whether they are complying with this part and may conduct on-site reviews. The Responsible Official will initiate an on-site review by sending to the Recipient a letter advising the Recipient of the practices to be reviewed; the programs affected by the review; and the opportunity, at any time before a final determination, to submit information that explains, validates, or otherwise addresses the practices under review.

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In addition, the Award Official will include, in normal program compliance reviews and monitoring procedures, appropriate actions to review and monitor compliance with general or specific program requirements designed to implement the requirements of this part.

(2) *Time period of the review.* (i) For the Entitlement program, compliance reviews will cover the three years before the date of the review.

(ii) For the Urban Development Action Grant (UDAG) program, the compliance review is applicable only to UDAG loan repayments or other payments or revenues classified as program income. UDAG repayments or other payments or revenues classified as miscellaneous revenue are not subject to compliance review under this part. (See 24 CFR 570.500(a).) The compliance review will cover the time period that program income is being repaid.

(iii) For the State and HUD-Administered Small Cities programs, the compliance review will cover the four years before the date of the review.

(iv) For all other programs, the time period covered by the review will be four years before the date of the review.

(v) On a case-by-case basis, at the discretion of the Responsible Official, the above time frames for review can be expanded where facts or allegations warrant further investigation.

(3) *Early compliance resolution.* On the last day of the on-site visit, after the compliance review, the Recipient will be given an opportunity to supplement the record. Additionally, a prefinding conference may be held and a summary of the proposed findings may be presented to the Recipient. In those instances where the issue(s) cannot be resolved at a prefinding conference or with the supplemental information, a meeting will be scheduled to attempt a voluntary settlement.

(4) *Notification of findings.* (i) The Assistant Secretary will notify the Recipient of Federal financial assistance of the results of the compliance review in a letter of findings sent by certified mail, return receipt requested.

(ii) *Letter of findings.* The letter of findings will include the findings of

fact and the conclusions of law; a description of a remedy for each violation found; and a notice that a copy of HUD's final report concerning its compliance review will be made available, upon request, to the Recipient.

(c) *Right to a review of the letter of findings.* (1) Within 30 days of receipt of the letter of findings, any party may request that a review be made of the letter of findings, by mailing or delivering to the Responsible Official, Room 5100, Office of Fair Housing and Equal Opportunity, HUD, Washington, DC 20410, a written statement of the reasons why the letter of findings should be modified.

(2) The Responsible Official will send by certified mail, return receipt requested, a copy of the request for review to all parties. Parties other than the party requesting review and HUD shall have 20 days from receipt to respond to the request for review.

(3) The Responsible Official will either sustain or modify the letter of findings or require that further investigation be conducted, within 60 days of the request for review. The Responsible Official's decision shall constitute the formal determination of compliance or noncompliance.

(4) If no party requests that the letter of findings be reviewed, the Responsible Official, within 14 calendar days of the expiration of the time period in paragraph (a)(9)(i) of this section, will send a formal written determination of compliance or noncompliance to all parties.

(d) *Voluntary compliance time limits.* The Recipient will have 10 calendar days from receipt of the letter of findings of noncompliance, or such other reasonable time as specified in the letter, within which to agree, in writing, to come into voluntary compliance or to contact the Responsible Official for settlement discussions. If the Recipient fails to meet this deadline, HUD will proceed in accordance with §§6.12 and 6.13.

(e) *Informal resolution/voluntary compliance—(1) General.* It is the policy of HUD to encourage the informal resolution of matters. A complaint or a compliance review may be resolved by informal means at any time. If a letter of findings is issued, and the letter makes

a finding of noncompliance, the Responsible Official will attempt to resolve the matter through a voluntary compliance agreement.

(2) *Objectives of informal resolution/voluntary compliance.* In attempting informal resolution, the Responsible Official will attempt to achieve a just resolution of the matter and to obtain assurances, where appropriate, that the Recipient will satisfactorily remedy any violations of the rights of any complainant, and will take such action as will assure the elimination of any violation of this part or the prevention of the occurrence of such violation in the future. If a finding of noncompliance has been made, the terms of such an informal resolution shall be reduced to a written voluntary compliance agreement, signed by the Recipient and the Responsible Official, and be made part of the file. Such voluntary compliance agreements shall seek to protect the interests of the complainant (if any), other persons similarly situated, and the public.

(3) *Right to file a private civil action.* At any time in the process, the complainant has the right to file a private civil action. If the complainant does so, the Responsible Official has the discretion to administratively close the investigation or continue the investigation, if he or she decides that it is in the best interests of the Department to do so. If the Responsible Official makes a finding of noncompliance and an agreement to voluntarily comply is not obtained from the Recipient, the procedures at §§ 6.12 and 6.13 for effecting compliance shall be followed.

(f) *Intimidatory or retaliatory acts prohibited.* No Recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by this part, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, compliance review, proceeding, or hearing under this part.

§ 6.12 Procedure for effecting compliance.

(a) Whenever the Assistant Secretary determines that a Recipient of Federal financial assistance has failed to com-

ply with Section 109(a) or this part and voluntary compliance efforts have failed, the Secretary will notify the Governor of the State or the Chief Executive Officer of the unit of general local government of the findings of noncompliance and will request that the Governor or the Chief Executive Officer secure compliance. If within a reasonable period of time, not to exceed 60 days, the Governor or the Chief Executive Officer fails or refuses to secure compliance, the Secretary will:

(1) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) Exercise the powers and functions provided by Title VI;

(3) Terminate or reduce payments under Title I, or limit the availability of payments under Title I to programs or activities not affected by the failure to comply; or

(4) Take such other actions as may be provided by law, including, but not limited to, the initiation of proceedings under 24 CFR part 2424 or any applicable proceeding under State or local law.

(b) *Termination, reduction, or limitation of the availability of Title I payments.* No order terminating, reducing, or limiting the availability of Title I payments under this part shall become effective until:

(1) The Secretary has notified the Governor of the State or the Chief Executive Officer of the unit of general local government of the Recipient's failure to comply in accordance with paragraph (a) of this section and of the termination, reduction or limitation of the availability of Title I payments to be taken;

(2) The Secretary has determined that compliance cannot be secured by voluntary means;

(3) The Recipient has been extended an opportunity for a hearing in accordance with § 6.13(a); and

(4) A final agency notice or decision has been rendered in accordance with paragraph (c) of this section or 24 CFR part 180.

(c) If a Recipient does not respond to the notice of opportunity for a hearing or does not elect to proceed with a hearing within 20 days of the issuance

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of the Secretary's actions listed in paragraphs (b)(1), (2) and (3) of this section, then the Secretary's approval of the termination, reduction or limitation of the availability of Title I payments is considered a final agency notice and the Recipient may seek judicial review in accordance with section 111(c) of the Act.

[64 FR 3797, Jan. 25, 1999, as amended at 72 FR 73491, Dec. 27, 2007]

§ 6.13 Hearings and appeals.

(a) When a Recipient requests an opportunity for a hearing, in accordance with § 6.12(b)(3), the General Counsel will follow the notification procedures set forth in 24 CFR 180.415. The hearing, and any petition for review, will be conducted in accordance with the procedures set forth in 24 CFR part 180.

(b) After a hearing is held and a final agency decision is rendered under 24 CFR part 180, the Recipient may seek judicial review in accordance with section 111(c) of the Act.

PART 7—EQUAL EMPLOYMENT OPPORTUNITY; POLICY, PROCEDURES AND PROGRAMS

Subpart A—Equal Employment Opportunity Without Regard to Race, Color, Religion, Sex, National Origin, Age, Disability or Reprisal

GENERAL PROVISIONS

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- 7.1 Policy.
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- 7.25 Pre-complaint processing.

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- 7.45 EEO group statistics and reports.

Subpart B [Reserved]

AUTHORITY: 29 U.S.C. 206(d), 633a, 791 and 794; 42 U.S.C. 2000e note, 2000e-16, 42 U.S.C. 3535(d); E.O. 11478 of Aug. 8, 1969; 34 FR 19285, Aug. 12, 1969; E.O. 10577, 3 CFR 1954-1958; E.O. 11222, 3 CFR 1964-1965.

SOURCE: 66 FR 20564, Apr. 23, 2001, unless otherwise noted.

Subpart A—Equal Employment Opportunity Without Regard to Race, Color Religion, Sex, National Origin, Age, Disability or Reprisal

GENERAL PROVISIONS

§ 7.1 Policy.

The Department's equal employment opportunity policy conforms with the policies expressed in Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4); the Civil Rights Act of 1991 (Pub. L. 102-166, approved November 21, 1991); Executive Order 11478 of 1969 (34 FR 12985, 3 CFR 1966-1970 Comp., p. 803); the Age Discrimination in Employment Act of 1967 (ADEA) (29 U.S.C. 621 *et seq.*); the Equal Pay Act of 1963 (29 U.S.C. 206d); sections 501 and 504 of the Rehabilitation Act of 1973 (29

(B) Commitment of private funds by the financial institution for rehabilitation loans at below market interest rates, at higher than normal risk, or with longer than normal repayment periods; or

(C) Provision of administrative services in support of the rehabilitation program by the participating financial institution at no cost or at lower than actual cost.

(c) *Program income.* Interest earned on lump sum deposits and payments on loans made from such deposits are program income and, during the period of the agreement, shall be used for rehabilitation activities under the provisions of this section.

(d) *Outstanding findings.* Notwithstanding any other provision of this section, no recipient shall enter into a new agreement during any period of time in which an audit or monitoring finding on a previous lump sum draw-down agreement remains unresolved.

(e) *Prior notification.* The recipient shall provide the HUD field office with written notification of the amount of funds to be distributed to a private financial institution before distribution under the provisions of this section.

(f) *Recordkeeping requirements.* The recipient shall maintain in its files a copy of the written agreement and related documents establishing conformance with this section and concerning performance by a financial institution in accordance with the agreement.

Subpart K—Other Program Requirements

SOURCE: 53 FR 34456, Sept. 6, 1988, unless otherwise noted.

§ 570.600 General.

(a) This subpart K enumerates laws that the Secretary will treat as applicable to grants made under section 106 of the Act, other than grants to states made pursuant to section 106(d) of the Act, for purposes of the Secretary's determinations under section 104(e)(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has enforcement responsibility. This subpart K applies to grants made under the Insular Areas

Program in § 570.405 and § 570.440 with the exception of § 570.612. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. For laws that the Secretary will treat as applicable to grants made to states under section 106(d) of the Act for purposes of the determination required to be made by the Secretary pursuant to section 104(e)(2) of the Act, see § 570.487.

(b) This subpart also sets forth certain additional program requirements which the Secretary has determined to be applicable to grants provided under the Act as a matter of administrative discretion.

(c) In addition to grants made pursuant to section 106(b) and 106(d)(2)(B) of the Act (subparts D and F, respectively), the requirements of this subpart K are applicable to grants made pursuant to sections 107 and 119 of the Act (subparts E and G, respectively), and to loans guaranteed pursuant to subpart M.

[53 FR 34456, Sept. 6, 1988, as amended at 61 FR 11477, Mar. 20, 1996; 72 FR 12536, Mar. 15, 2007]

§ 570.601 Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing; Executive Order 11063.

(a) The following requirements apply according to sections 104(b) and 107 of the Act:

(1) Public Law 88-352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and implementing regulations in 24 CFR part 1.

(2) Public Law 90-284, which is the Fair Housing Act (42 U.S.C. 3601-3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. Furthermore, in accordance with section 104(b)(2) of the Act, for each community receiving a grant

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under subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard.

(b) Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652; 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing), and implementing regulations in 24 CFR part 107, also apply.

[61 FR 11477, Mar. 20, 1996]

§ 570.602 Section 109 of the Act.

Section 109 of the Act requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR part 6.

[64 FR 3802, Jan. 25, 1999]

§ 570.603 Labor standards.

(a) Section 110(a) of the Act contains labor standards that apply to nonvolunteer labor financed in whole or in part with assistance received under the Act. In accordance with section 110(a) of the Act, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) also applies. However, these requirements apply to the rehabilitation of residential property only if such property contains not less than 8 units.

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(b) The regulations in 24 CFR part 70 apply to the use of volunteers.

[61 FR 11477, Mar. 20, 1996]

§ 570.604 Environmental standards.

For purposes of section 104(g) of the Act, the regulations in 24 CFR part 58 specify the other provisions of law which further the purposes of the National Environmental Policy Act of 1969, and the procedures by which grantees must fulfill their environmental responsibilities. In certain cases, grantees assume these environmental review, decisionmaking, and action responsibilities by execution of grant agreements with the Secretary.

[61 FR 11477, Mar. 20, 1996]

§ 570.605 National Flood Insurance Program.

Notwithstanding the date of HUD approval of the recipient's application (or, in the case of grants made under subpart D of this part or HUD-administered small cities recipients in Hawaii, the date of submission of the grantee's consolidated plan, in accordance with 24 CFR part 91), section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) and the regulations in 44 CFR parts 59 through 79 apply to funds provided under this part 570.

[61 FR 11477, Mar. 20, 1996]

§ 570.606 Displacement, relocation, acquisition, and replacement of housing.

(a) *General policy for minimizing displacement.* Consistent with the other goals and objectives of this part, grantees (or States or state recipients, as applicable) shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this part.

(b) *Relocation assistance for displaced persons at URA levels.* (1) A displaced person shall be provided with relocation assistance at the levels described in, and in accordance with the requirements of 49 CFR part 24, which contains the government-wide regulations implementing the Uniform Relocation

Section 504 of the Rehabilitation Act of 1973

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served with a Federal court complaint based upon a complaint that is pending on appeal at the EEOC.

(d) The Department shall submit annual written national equal employment opportunity plans of action for the review and approval of the EEOC. Plans shall be submitted in a format prescribed by the EEOC and in accordance with 29 CFR 1614.602.

[66 FR 20564, Apr. 23, 2001, as amended at 69 FR 62174, Oct. 22, 2004]

Subpart B [Reserved]

PART 8—NONDISCRIMINATION BASED ON HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Subpart A—General Provisions

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- 8.1 Purpose.
- 8.2 Applicability.
- 8.3 Definitions.
- 8.4 Discrimination prohibited.
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- 8.10 General prohibitions against employment discrimination.
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- 8.20 General requirement concerning program accessibility.
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- 8.23 Alterations of existing housing facilities.
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- 8.25 Public housing and multi-family Indian housing.
- 8.26 Distribution of accessible dwelling units.
- 8.27 Occupancy of accessible dwelling units.
- 8.28 Housing certificate and housing voucher programs.
- 8.29 Homeownership programs (sections 235(l) and 235(j), Turnkey III and Indian housing mutual self-help programs).
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- 8.31 Historic properties.
- 8.32 Accessibility standards.
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Subpart D—Enforcement

- 8.50 Assurances required.
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- 8.55 Compliance information.
- 8.56 Conduct of investigations.
- 8.57 Procedure for effecting compliance.
- 8.58 Hearings.

AUTHORITY: 29 U.S.C. 794; 42 U.S.C. 3535(d) and 5309.

SOURCE: 53 FR 20233, June 2, 1988, unless otherwise noted.

Subpart A—General Provisions

§ 8.1 Purpose.

(a) The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), to the end that no otherwise qualified individual with handicaps in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development. This part also implements section 109 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309). This part does not effectuate section 504 as it applies to any program or activity conducted by the Department. Compliance with this part does not assure compliance with requirements for accessibility by physically-handicapped persons imposed under the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157; 24 CFR part 40).

(b) The policies and standards for compliance established by this part are established in contemplation of, and with a view to enforcement through, the Department's administration of programs or activities receiving Federal financial assistance and the administrative procedures described in subparts D and E (including, without limitation, judicial enforcement under § 8.57(a)).

§ 8.2 Applicability.

This part applies to all applicants for, and recipients of, HUD assistance

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in the operation of programs or activities receiving such assistance. Such assistance includes, but is not limited to, that which is listed in appendix A of this part.

§ 8.3 Definitions.

As used in this part:

Accessible, when used with respect to the design, construction, or alteration of a facility or a portion of a facility other than an individual dwelling unit, means that the facility or portion of the facility when designed, constructed or altered, can be approached, entered, and used by individuals with physical handicaps. The phrase *accessible to and usable by* is synonymous with accessible.

Accessible, when used with respect to the design, construction, or alteration of an individual dwelling unit, means that the unit is located on an accessible route and when designed, constructed, altered or adapted can be approached, entered, and used by individuals with physical handicaps. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in § 8.32 is *accessible* within the meaning of this paragraph. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified individual with handicaps (e.g., a current occupant of such unit or of another unit under the control of the same recipient, or an applicant on a waiting list), the unit will be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person.

Accessible route means a continuous unobstructed path connecting accessible elements and spaces in a building or facility that complies with the space and reach requirements of applicable standards prescribed by § 8.32. An accessible route that serves only accessible units occupied by persons with hearing or vision impairments need not comply with those requirements intended to effect accessibility for persons with mobility impairments.

Adaptability means the ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab

bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without handicaps, or to accommodate the needs of persons with different types or degrees of disability. For example, in a unit adaptable for a hearing-impaired person, the wiring for visible emergency alarms may be installed but the alarms need not be installed until such time as the unit is made ready for occupancy by a hearing-impaired person.

Alteration means any change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems.

Applicant for assistance means one who submits an application, request, plan, or statement required to be approved by a Department official or by a primary recipient as a condition of eligibility for Federal financial assistance. An application means such a request, plan or statement.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving Federal financial assistance. For example, auxiliary aids for persons with impaired vision may include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids for persons with impaired hearing may include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Department or *HUD* means the Department of Housing and Urban Development.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other real or personal property or interest in the property.

Federal financial assistance means any assistance provided or otherwise made

available by the Department through any grant, loan, contract or any other arrangement, in the form of:

- (a) Funds;
- (b) Services of Federal personnel; or
- (c) Real or personal property or any interest in or use of such property, including:

- (1) Transfers or leases of the property for less than fair market value or for reduced consideration; and

- (2) Proceeds from a subsequent transfer or lease of the property if the Federal share of its fair market value is not returned to the Federal Government.

Federal financial assistance includes community development funds in the form of proceeds from loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended, but does not include assistance made available through direct Federal procurement contracts or payments made under these contracts or any other contract of insurance or guaranty.

Handicap means any condition or characteristic that renders a person an individual with handicaps.

Historic preservation programs or activities means programs or activities receiving Federal financial assistance that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. For purposes of employment, this term does not include: Any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from performing the duties of the job in question, or whose employment, by reason of current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; or any individual who has a currently contagious disease or infec-

tion and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job. For purposes of other programs and activities, the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

(a) *Physical or mental impairment* includes:

- (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

- (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(b) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) *Is regarded as having an impairment* means:

- (1) Has a physical or mental impairment that does not substantially limit one or more major life activities but

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that is treated by a recipient as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment.

Multifamily housing project means a project containing five or more dwelling units.

Primary recipient means a person, group, organization, State or local unit of government that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program or activity.

Program or activity means all of the operations of:

(a)(1) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(2) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(b)(1) A college, university, or other post-secondary institution, or a public system of higher education; or

(2) A local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

(c)(1) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(2) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any

other corporation, partnership, private organization, or sole proprietorship; or

(d) Any other entity which is established by two or more of the entities described in paragraphs (a), (b), or (c) of this section;

any part of which is extended Federal financial assistance.

Project means the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract for Federal financial assistance or application for assistance, or are treated as a whole for processing purposes, whether or not located on a common site.

Qualified individual with handicaps means:

(a) With respect to employment, an individual with handicaps who, with reasonable accommodation, can perform the essential functions of the job in question; and

(b) With respect to any non-employment program or activity which requires a person to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the recipient can demonstrate would result in a fundamental alteration in its nature; or

(c) With respect to any other non-employment program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity. *Essential eligibility requirements* include stated eligibility requirements such as income as well as other explicit or implicit requirements inherent in the nature of the program or activity, such as requirements that an occupant of multifamily housing be capable of meeting the recipient's selection criteria and be capable of complying with all obligations of occupancy with or without supportive services provided by persons other than the recipient. For example, a chronically mentally ill person whose particular condition poses a significant risk of substantial interference with the safety or enjoyment of others or with his or her own health or safety in

the absence of necessary supportive services may be *qualified* for occupancy in a project where such supportive services are provided by the recipient as part of the assisted program. The person may not be *qualified* for a project lacking such services.

Recipient means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. An entity or person receiving housing assistance payments from a recipient on behalf of eligible families under a housing assistance payments program or a voucher program is not a recipient or subrecipient merely by virtue of receipt of such payments.

Replacement cost of the completed facility means the current cost of construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities and administrative costs for project development activities.

Secretary means the Secretary of Housing and Urban Development.

Section 504 means section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, as it applies to programs or activities receiving Federal financial assistance.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

[53 FR 20233, June 2, 1988; 54 FR 8188, Feb. 27, 1989]

§8.4 Discrimination prohibited.

(a) No qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity

that receives Federal financial assistance from the Department.

(b)(1) A recipient, in providing any housing, aid, benefit, or service in a program or activity that receives Federal financial assistance from the Department may not, directly or through contractual, licensing, or other arrangements, solely on the basis of handicap:

(i) Deny a qualified individual with handicaps the opportunity to participate in, or benefit from, the housing, aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in, or benefit from, the housing, aid, benefit, or service that is not equal to that afforded to others;

(iii) Provide a qualified individual with handicaps with any housing, aid, benefit, or service that is not as effective in affording the individual an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate housing, aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps from that provided to others unless such action is necessary to provide qualified individuals with handicaps with housing, aid, benefits, or services that are as effective as those provided to others.

(v) Aid or perpetuate discrimination against a qualified individual with handicaps by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any housing, aid, benefit, or service to beneficiaries in the recipient's federally assisted program or activity;

(vi) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vii) Deny a dwelling to an otherwise qualified buyer or renter because of a handicap of that buyer or renter or a person residing in or intending and eligible to reside in that dwelling after it is sold, rented or made available; or

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(viii) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other qualified individuals receiving the housing, aid, benefit, or service.

(2) For purposes of this part, housing, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with handicaps and non-handicapped persons, but must afford individuals with handicaps equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

(3) A recipient may not deny a qualified individual with handicaps the opportunity to participate in any federally assisted program or activity that is not separate or different despite the existence of permissibly separate or different programs or activities.

(4) In any program or activity receiving Federal financial assistance from the Department, a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with handicaps to discrimination solely on the basis of handicap;

(ii) Defeat or substantially impair the accomplishment of the objectives of the recipient's federally assisted program or activity for qualified individuals with a particular handicap involved in the program or activity, unless the recipient can demonstrate that the criteria or methods of administration are manifestly related to the accomplishment of an objective of a program or activity; or

(iii) Perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a federally assisted facility, an applicant for assistance or a recipient may not make selections the purpose or effect of which would:

(i) Exclude qualified individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under, any program or ac-

tivity that receives Federal financial assistance from the Department, or

(ii) Defeat or substantially impair the accomplishment of the objectives of the program or activity with respect to qualified individuals with handicaps.

(6) As used in this section, the housing, aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any housing, aid, benefit, or service provided in or through a facility that has been constructed, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c)(1) Non-handicapped persons may be excluded from the benefits of a program if the program is limited by Federal statute or executive order to individuals with handicaps. A specific class of individuals with handicaps may be excluded from a program if the program is limited by Federal statute or Executive order to a different class of individuals.

(2) Certain Department programs operate under statutory definitions of *handicapped person* that are more restrictive than the definition of *individual with handicaps* contained in § 8.3 (see appendix B). Those definitions are not superseded or otherwise affected by this regulation.

(d) Recipients shall administer programs and activities receiving Federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

(e) The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement that, based on handicap, imposes inconsistent or contradictory prohibitions or limits upon the eligibility of qualified individuals with handicaps to receive services or to practice any occupation or profession.

(f) The enumeration of specific forms of prohibited discrimination in paragraphs (b) through (e) of this section does not limit the general prohibition in paragraph (a) of this section.

[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988]

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§ 8.6 Communications.

(a) The recipient shall take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public.

(1) The recipient shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity receiving Federal financial assistance.

(i) In determining what auxiliary aids are necessary, the recipient shall give primary consideration to the requests of the individual with handicaps.

(ii) The recipient is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where a recipient communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective communication systems shall be used.

(b) The recipient shall adopt and implement procedures to ensure that interested persons (including persons with impaired vision or hearing) can obtain information concerning the existence and location of accessible services, activities, and facilities.

(c) This section does not require a recipient to take any action that the recipient can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or burdens, the recipient shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity receiving HUD assistance.

Subpart B—Employment

§ 8.10 General prohibitions against employment discrimination.

(a) No qualified individual with handicaps shall, solely on the basis of

handicap, be subjected to discrimination in employment under any program or activity that receives Federal financial assistance from the Department.

(b) A recipient may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, injury or illness, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence for training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified applicants with handicaps or employees with handicaps to discrimination prohibited by this subpart. The relationships referred to in this paragraph (d) include relationships with employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeship programs.

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§ 8.11 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant with handicaps or employee with handicaps, unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees accessible to and usable by individuals with handicaps and

(2) Job restructuring, job relocation, part-time or modified work schedules, acquisitions or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining, under paragraph (a) of this section, whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 8.12 Employment criteria.

(a) A recipient may not use any employment test or other selection criterion that screens out or tends to screen out individuals with handicaps or any class of individuals with handicaps unless:

(1) The recipient demonstrates that the test score or other selection criterion, as used by the recipient, is job-related for the position in question; and

(2) The appropriate HUD official demonstrates that alternative job-related

tests or criteria that tend to screen out fewer individuals with handicaps are unavailable.

(b) A recipient shall select and administer tests concerning employment to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 8.13 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not make a preemployment inquiry or conduct a preemployment medical examination of an applicant to determine whether the applicant is an individual with handicaps or the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is undertaking affirmative action efforts, voluntary or otherwise, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, if the following conditions are met:

(1) The recipient states clearly on any written questionnaire used for this purpose, or makes clear orally if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations, or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential (as provided in paragraph (d) of this section), that refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a

medical examination conducted before the employee's entrance on duty if all entering employees in that category of job classification must take such an examination regardless of handicap, and the results of such examination are used only in accordance with the requirements of this part.

(d) Information obtained under this section concerning the medical condition or history of the applicant is to be collected and maintained on separate forms that are accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed of restrictions on the work or duties of individuals with handicaps and informed of necessary accommodations;

(2) First aid and safety personnel may be informed if the condition might require emergency treatment; and

(3) Government officials investigating compliance with section 504 shall be provided relevant information upon request.

Subpart C—Program Accessibility

§ 8.20 General requirement concerning program accessibility.

Except as otherwise provided in §§ 8.21(c)(1), 8.24(a), 8.25, and 8.31, no qualified individual with handicaps shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance.

§ 8.21 Non-housing facilities.

(a) *New construction.* New non-housing facilities shall be designed and constructed to be readily accessible to and usable by individuals with handicaps.

(b) *Alterations to facilities.* Alterations to existing non-housing facilities shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. For purposes of this paragraph, the phrase *to the maximum extent feasible* shall not be interpreted as requiring that a recipient make a non-housing facility, or element thereof, accessible if doing so would impose undue financial and ad-

ministrative burdens on the operation of the recipient's program or activity.

(c) *Existing non-housing facilities*—(1) *General.* A recipient shall operate each non-housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(i) Necessarily require a recipient to make each of its existing non-housing facilities accessible to and usable by individuals with handicaps;

(ii) In the case of historic preservation programs or activities, require the recipient to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(iii) Require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the recipient shall take any action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(2) *Methods*—(1) *General.* A recipient may comply with the requirements of this section in its programs and activities receiving Federal financial assistance through such means as location of programs or services to accessible facilities or accessible portions of facilities, assignment of aides to beneficiaries, home visits, the addition or redesign of equipment (e.g., appliances or furnishings) changes in management policies or procedures, acquisition or construction of additional facilities, or alterations to existing facilities on a selective basis, or any other methods that result in making its program or activity accessible to individuals with handicaps. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirements of this section, the recipient shall give priority to those methods that offer programs and activities to

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qualified individuals with handicaps in the most integrated setting appropriate.

(ii) *Historic preservation programs or activities.* In meeting the requirements of § 8.21(c) in historic preservation programs or activities, a recipient shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § 8.21(c)(1)(ii) or (iii), alternative methods of achieving program accessibility include using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible; assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or adopting other innovative methods.

(3) *Time period for compliance.* The recipient shall comply with the obligations established under this section within sixty days of July 11, 1988, except that where structural changes in facilities are undertaken, such changes shall be made within three years of July 11, 1988, but in any event as expeditiously as possible.

(4) *Transition plan.* If structural changes to non-housing facilities will be undertaken to achieve program accessibility, a recipient shall develop, within six months of July 11, 1988, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including individuals with handicaps or organizations representing individuals with handicaps. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(i) Identify physical obstacles in the recipient's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(ii) Describe in details the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will

be taken during each year of the transition period;

(iv) Indicate the official responsible for implementation of the plan; and

(v) Identify the persons or groups with whose assistance the plan was prepared.

(Approved by the Office of Management and Budget under control number 2529-0034)

[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988, as amended at 54 FR 37645, Sept. 12, 1989]

§ 8.22 New construction—housing facilities.

(a) New multifamily housing projects (including public housing and Indian housing projects as required by § 8.25) shall be designed and constructed to be readily accessible to and usable by individuals with handicaps.

(b) Subject to paragraph (c) of this section, a minimum of five percent of the total dwelling units or at least one unit in a multifamily housing project, whichever is greater, shall be made accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in § 8.32 is accessible for purposes of this section. An additional two percent of the units (but not less than one unit) in such a project shall be accessible for persons with hearing or vision impairments.

(c) HUD may prescribe a higher percentage or number than that prescribed in paragraph (b) of this section for any area upon request therefor by any affected recipient or by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD of a need for a higher percentage or number, based on census data or other available current data (including a currently effective Housing Assistance Plan or Comprehensive Homeless Assistance Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs,

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HUD shall take into account the expected needs of eligible persons with and without handicaps.

[53 FR 20233, June 2, 1988, as amended at 56 FR 920, Jan. 9, 1991]

§ 8.23 Alterations of existing housing facilities.

(a) *Substantial alteration.* If alterations are undertaken to a project (including a public housing project as required by § 8.25(a)(2)) that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the provisions of § 8.22 shall apply.

(b) *Other alterations.* (1) Subject to paragraph (b)(2) of this section, alterations to dwelling units in a multifamily housing project (including public housing) shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph. Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities shall, to the maximum extent feasible, be made to be accessible to and usable by individuals with handicaps. For purposes of this paragraph, the phrase *to the maximum extent feasible* shall not be interpreted as requiring that a recipient (including a PHA) make a dwelling unit, common area, facility or element thereof accessible if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project.

(2) HUD may prescribe a higher percentage or number than that prescribed in paragraph (b)(1) of this section for any area upon request therefor by any affected recipient or by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD of a

need for a higher percentage or number, based on census data or other available current data (including a currently effective Housing Assistance Plan or Comprehensive Homeless Assistance Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD shall take into account the expected needs of eligible persons with and without handicaps.

§ 8.24 Existing housing programs.

(a) *General.* A recipient shall operate each existing housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require a recipient to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) Require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the recipient shall take any action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* A recipient may comply with the requirements of this section through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, provision of housing or related services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. A recipient is not required to make structural changes in existing housing facilities where other methods are effective in achieving compliance with this section or to provide supportive services that are not part of the program. In choosing among available methods

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for meeting the requirements of this section, the recipient shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The recipient shall comply with the obligations established under this section within sixty days of July 11, 1988 except that—

(1) In a public housing program where structural changes in facilities are undertaken, such changes shall be made within the timeframes established in § 8.25(c).

(2) In other housing programs, where structural changes in facilities are undertaken, such changes shall be made within three years of July 11, 1988, but in any event as expeditiously as possible.

(d) *Transition plan and time period for structural changes.* Except as provided in § 8.25(c), in the event that structural changes to facilities will be undertaken to achieve program accessibility, a recipient shall develop, within six months of July 11, 1988, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including individuals with handicaps or organizations representing individuals with handicaps. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

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(5) Identify the persons or groups with whose assistance the plan was prepared.

(Approved by the Office of Management and Budget under control number 2529-0034)

[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988, as amended at 54 FR 37645, Sept. 12, 1989]

§ 8.25 Public housing and multi-family Indian housing.

(a) *Development and alteration of public housing and multi-family Indian housing.* (1) The requirements of § 8.22 shall apply to all newly constructed public housing and multi-family Indian housing.

(2) The requirements of § 8.23 shall apply to public housing and multi-family Indian housing developed through rehabilitation and to the alteration of public housing and multi-family Indian housing.

(3) In developing public housing and multi-family Indian housing through the purchase of existing properties PHAs and IHAs shall give priority to facilities which are readily accessible to and usable by individuals with handicaps.

(b) *Existing public housing and multi-family Indian housing—general.* The requirements of § 8.24(a) shall apply to public housing and multi-family Indian housing programs.

(c) *Existing public housing and multi-family Indian housing—needs assessment and transition plan.* As soon as possible, each PHA (for the purpose of this paragraph, this includes an Indian Housing Authority) shall assess, on a PHA-wide basis, the needs of current tenants and applicants on its waiting list for accessible units and the extent to which such needs have not been met or cannot reasonably be met within four years through development, alterations otherwise contemplated, or other programs administered by the PHA (e.g., Section 8 Moderate Rehabilitation or Section 8 Existing Housing or Housing Vouchers). If the PHA currently has no accessible units or if the PHA or HUD determines that information regarding the availability of accessible units has not been communicated sufficiently so that, as a result, the number of eligible qualified individuals with handicaps on

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the waiting list is not fairly representative of the number of such persons in the area, the PHA's assessment shall include the needs of eligible qualified individuals with handicaps in the area. If the PHA determines, on the basis of such assessment, that there is no need for additional accessible dwelling units or that the need is being or will be met within four years through other means, such as new construction, Section 8 or alterations otherwise contemplated, no further action is required by the PHA under this paragraph. If the PHA determines, on the basis of its needs assessment, that alterations to make additional units accessible must be made so that the needs of eligible qualified individuals with handicaps may be accommodated proportionally to the needs of non-handicapped individuals in the same categories, then the PHA shall develop a transition plan to achieve program accessibility. The PHA shall complete the needs assessment and transition plan, if one is necessary, as expeditiously as possible, but in any event no later than two years after July 11, 1988. The PHA shall complete structural changes necessary to achieve program accessibility as soon as possible but in any event no later than four years after July 11, 1988. The Assistant Secretary for Fair Housing and Equal Opportunity and the Assistant Secretary for Public and Indian Housing may extend the four year period for a period not to exceed two years, on a case-by-case determination that compliance within that period would impose undue financial and administrative burdens on the operation of the recipient's public housing and multi-family Indian housing program. The Secretary or the Undersecretary may further extend this time period in extraordinary circumstances, for a period not to exceed one year. The plan shall be developed with the assistance of interested persons including individuals with handicaps or organizations representing individuals with handicaps. A copy of the needs assessment and transition plan shall be made available for public inspection. The transition plan shall, at a minimum—

(1) Identify physical obstacles in the PHA's facilities (e.g., dwelling units and common areas) that limit the ac-

cessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the PHA's facilities accessible. A PHA may, if necessary, provide in its plan that it will seek HUD approval, under 24 CFR part 968, of a comprehensive modernization program to meet the needs of eligible individuals with handicaps;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

(Approved by the Office of Management and Budget under control number 2529-0034)

[53 FR 20233, June 2, 1988, as amended at 54 FR 37645, Sept. 12, 1989; 56 FR 920, Jan. 9, 1991]

§ 8.26 Distribution of accessible dwelling units.

Accessible dwelling units required by § 8.22, 8.23, 8.24 or 8.25 shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that a qualified individual with handicaps' choice of living arrangements is, as a whole, comparable to that of other persons eligible for housing assistance under the same program. This provision shall not be construed to require provision of an elevator in any multifamily housing project solely for the purpose of permitting location of accessible units above or below the accessible grade level.

§ 8.27 Occupancy of accessible dwelling units.

(a) Owners and managers of multifamily housing projects having accessible units shall adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps, and shall take reasonable non-discriminatory steps to maximize the

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utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, the owner or manager before offering such units to a non-handicapped applicant shall offer such unit:

(1) First, to a current occupant of another unit of the same project, or comparable projects under common control, having handicaps requiring the accessibility features of the vacant unit and occupying a unit not having such features, or, if no such occupant exists, then

(2) Second, to an eligible qualified applicant on the waiting list having a handicap requiring the accessibility features of the vacant unit.

(b) When offering an accessible unit to an applicant not having handicaps requiring the accessibility features of the unit, the owner or manager may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

§ 8.28 Housing certificate and housing voucher programs.

(a) In carrying out the requirements of this subpart, a recipient administering a Section 8 Existing Housing Certificate program or a housing voucher program shall:

(1) In providing notice of the availability and nature of housing assistance for low-income families under program requirements, adopt suitable means to assure that the notice reaches eligible individuals with handicaps;

(2) In its activities to encourage participation by owners, include encouragement of participation by owners having accessible units;

(3) When issuing a Housing Certificate or Housing Voucher to a family which includes an individual with handicaps include a current listing of available accessible units known to the PHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit;

(4) Take into account the special problem of ability to locate an accessible unit when considering requests by eligible individuals with handicaps for

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extensions of Housing Certificates or Housing Vouchers; and

(5) If necessary as a reasonable accommodation for a person with disabilities, approve a family request for an exception rent under § 982.504(b)(2) for a regular tenancy under the Section 8 certificate program so that the program is readily accessible to and usable by persons with disabilities.

(b) In order to ensure that participating owners do not discriminate in the recipient's federally assisted program, a recipient shall enter into a HUD-approved contract with participating owners, which contract shall include necessary assurances of non-discrimination.

[53 FR 20233, June 2, 1988, as amended at 63 FR 23853, Apr. 30, 1998]

§ 8.29 Homeownership programs (sections 235(i) and 235(j), Turnkey III and Indian housing mutual self-help programs).

Any housing units newly constructed or rehabilitated for purchase or single family (including semi-attached and attached) units to be constructed or rehabilitated in a program or activity receiving Federal financial assistance shall be made accessible upon request of the prospective buyer if the nature of the handicap of an expected occupant so requires. In such case, the buyer shall consult with the seller or builder/sponsor regarding the specific design features to be provided. If accessibility features selected at the option of the homebuyer are ones covered by the standards prescribed by § 8.32, those features shall comply with the standards prescribed in § 8.32. The buyer shall be permitted to depart from particular specifications of these standards in order to accommodate his or her specific handicap. The cost of making a facility accessible under this paragraph may be included in the mortgage amount within the allowable mortgage limits, where applicable. To the extent such costs exceed allowable mortgage limits, they may be passed on to the prospective homebuyer, subject to maximum sales price limitations (see 24 CFR 235.320.)

§ 8.30 Rental rehabilitation program.

Each grantee or state recipient in the rental rehabilitation program shall, subject to the priority in 24 CFR 511.10(l) and in accordance with other requirements in 24 CFR part 511, give priority to the selection of projects that will result in dwelling units being made readily accessible to and usable by individuals with handicaps.

[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988]

§ 8.31 Historic properties.

If historic properties become subject to alterations to which this part applies the requirements of § 4.1.7 of the standards of § 8.32 of this part shall apply, except in the case of the Urban Development Action Grant (UDAG) program. In the UDAG program the requirements of 36 CFR part 801 shall apply. Accessibility to historic properties subject to alterations need not be provided if such accessibility would substantially impair the significant historic features of the property or result in undue financial and administrative burdens.

§ 8.32 Accessibility standards.

(a) Effective as of July 11, 1988, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) shall be deemed to comply with the requirements of §§ 8.21, 8.22, 8.23, and 8.25 with respect to those buildings. Departures from particular technical and scoping requirements of the UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided. The alteration of housing facilities shall also be in conformance with additional scoping requirements contained in this part. Persons interested in obtaining a copy of the UFAS are directed to § 40.7 of this title.

(b) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence

therein of individuals with physical handicaps.

(c) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

(d) For purposes of this section, section 4.1.4(11) of UFAS may not be used to waive or lower the minimum of five percent accessible units required by § 8.22(b) or to apply the minimum only to projects of 15 or more dwelling units.

(e) Except as otherwise provided in this paragraph, the provisions of §§ 8.21 (a) and (b), 8.22 (a) and (b), 8.23, 8.25(a) (1) and (2), and 8.29 shall apply to facilities that are designed, constructed or altered after July 11, 1988. If the design of a facility was commenced before July 11, 1988, the provisions shall be followed to the maximum extent practicable, as determined by the Department. For purposes of this paragraph, the date a facility is constructed or altered shall be deemed to be the date bids for the construction or alteration of the facility are solicited. For purposes of the Urban Development Action Grant (UDAG) program, the provisions shall apply to the construction or alteration of facilities that are funded under applications submitted after July 11, 1988. If the UDAG application was submitted before July 11, 1988, the provisions shall apply, to the maximum extent practicable, as determined by the Department.

[53 FR 20233, June 2, 1988, as amended at 61 FR 5203, Feb. 9, 1996]

§ 8.33 Housing adjustments.

A recipient shall modify its housing policies and practices to ensure that these policies and practices do not discriminate, on the basis of handicap, against a qualified individual with handicaps. The recipient may not impose upon individuals with handicaps other policies, such as the prohibition of assistive devices, auxiliary alarms, or guides in housing facilities, that have the effect of limiting the participation of tenants with handicaps in the recipient's federally assisted housing program or activity in violation of this part. Housing policies that the recipient can demonstrate are essential to

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the housing program or activity will not be regarded as discriminatory within the meaning of this section if modifications to them would result in a fundamental alteration in the nature of the program or activity or undue financial and administrative burdens.

Subpart D—Enforcement

§ 8.50 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance to HUD, or in the case of a subrecipient to a primary recipient, on a form specified by the responsible civil rights official, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure non-discrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 8.51 Self-evaluation.

(a) Each recipient shall, within one year of July 11, 1988, and after consultation with interested persons, including individuals with handicaps or organizations representing individuals with handicaps:

(1) Evaluate its current policies and practices to determine whether, in whole or in part, they do not or may not meet the requirements of this part;

(2) Modify any policies and practices that do not meet the requirements of this part; and

(3) Take appropriate corrective steps to remedy the discrimination revealed by the self-evaluation.

(b) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (a)(1) of this section, maintain on file, make available for public inspection, and provide to the responsible civil rights official, upon request: (1) A list of the interested persons consulted; (2) a description of areas examined and any

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problems identified; and (3) a description of any modifications made and of any remedial steps taken.

(Approved by the Office of Management and Budget under control number 2529-0034)

[53 FR 20233, June 2, 1988, as amended at 54 FR 37645, Sept. 12, 1989]

§ 8.52 Remedial and affirmative action.

(a) *Remedial action.* (1) If the responsible civil rights official finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the responsible civil rights official deems necessary to overcome the effects of the discrimination.

(2) The responsible civil rights official may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action—

(i) With respect to individuals with handicaps who are no longer participants in the program but who were participants in the program when such discrimination occurred or

(ii) With respect to individuals with handicaps who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take nondiscriminatory steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified individuals with handicaps.

§ 8.53 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from appli-

cants for employment or from applicants for admission to housing covered by this part.

§ 8.54 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 8.53. A recipient shall make the initial notification required by this paragraph within 90 days of July 11, 1988. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

(c) The recipient shall ensure that members of the population eligible to be served or likely to be affected directly by a federally assisted program who have visual or hearing impairments are provided with the information necessary to understand and participate in the program. Methods for ensuring participation include, but are not limited to, qualified sign language

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and oral interpreters, readers, or the use of taped and Braille materials.

§ 8.55 Compliance information.

(a) *Cooperation and assistance.* The responsible civil rights official and the award official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible civil rights official or his or her designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible civil rights official or his or her designee may determine to be necessary to enable him or her to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for the Department data showing the extent to which individuals with handicaps are beneficiaries of federally assisted programs.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible civil rights official during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program or activity under which the recipient receives Federal financial assistance, and make such information available to them in such manner as the responsible civil rights official finds necessary to apprise such persons

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of the protections against discrimination assured them by this part.

(Approved by the Office of Management and Budget under control number 2529-0034)

[53 FR 20233, June 2, 1988, as amended at 54 FR 37645, Sept. 12, 1989]

§ 8.56 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible civil rights official or designee may periodically review the practices of recipients to determine whether they are complying with this part and where he or she has a reasonable basis to do so may conduct on-site reviews. Such basis may include any evidence that a problem exists or that programmatic matters exist that justify on-site investigation in selected circumstances. The responsible civil rights official shall initiate an on-site review by sending to the recipient a letter advising the recipient of the practices to be reviewed; the programs affected by the review; and the opportunity, at any time prior to receipt of a final determination, to make a documentary or other submission that explains, validates, or otherwise addresses the practices under review. In addition, each award official shall include in normal program compliance reviews and monitoring procedures appropriate actions to review and monitor compliance with general or specific program requirements designed to effectuate the requirements of this part.

(b) *Investigations.* The responsible civil rights official shall make a prompt investigation whenever a compliance review, report, complaint or any other information indicates a possible failure to comply with this part.

(c) *Filing a complaint—(1) Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this part may by himself or herself or by his or her authorized representative file a complaint with the responsible civil rights official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or who is the authorized representative of a member of that class may file a complaint with the responsible civil rights official.

(2) *Confidentiality.* The responsible civil rights official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination, unless the responsible civil rights official waives this time limit for good cause shown. For purposes of determining when a complaint is filed under this paragraph, a complaint mailed to the Department shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the Department.

(4) *Where to file complaints.* Complaints may be filed by mail with the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410, or any Regional or Field Office of the Department.

(5) *Contents of complaints.* Each complaint should contain the complainant's name and address, the name and address of the recipient alleged to have violated this part, and a description of the recipient's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation of this part.

(6) *Amendments of complaints.* Complaints may be reasonably and fairly amended at any time. Amendments to complaints such as clarification and amplification of allegations in a complaint or the addition of other recipients may be made at any time during the pendency of the complaint and any amendment shall be deemed to be made as of the original filing date.

(d) *Notification.* The responsible civil rights official will notify the complainant and the recipient of the agency's receipt of the complaint within ten (10) calendar days.

(e) *Complaint processing procedures.* After acknowledging receipt of a complaint, the responsible civil rights official will immediately initiate complaint processing procedures.

(1) Preliminary investigation.

(i) Within twenty (20) calendar days of acknowledgement of the complaint, the responsible civil rights official will review the complaint for acceptance, rejection, or referral to the appropriate Federal agency.

(ii) If the complaint is accepted, the responsible civil rights official will notify the complainant and the award official. The responsible civil rights official will also notify the applicant or recipient complained against of the allegations and give the applicant or recipient an opportunity to make a written submission responding to, rebutting, or denying the allegations raised in the complaint.

(iii) The party complained against may send the responsible civil rights official a response to the notice of complaint within thirty (30) calendar days of receiving it. With leave of the responsible civil rights official, an answer may be amended at any time. The responsible civil rights official will permit answers to be amended for good cause shown.

(2) *Informal resolution.* In accordance with paragraph (j) of this section, the responsible civil rights official shall attempt to resolve complaints informally whenever possible.

(f) *Dismissal of complaint.* If the investigation reveals no violation of this part, the responsible civil rights official will dismiss the complaint and notify the complainant and recipient.

(g) *Letter of findings.* If an informal resolution of the complaint is not reached the responsible civil rights official or his or her designee shall, within 180 days of receipt of the complaint, notify the recipient and the complainant (if any) of the results of the investigation in a letter sent by certified mail, return receipt requested, containing the following:

(1) Preliminary findings of fact and a preliminary finding of compliance or noncompliance;

(2) A description of an appropriate remedy for each violation believed to exist;

(3) A notice that a copy of the Final Investigative Report of the Department will be made available, upon request, to the recipient and the complainant (if any); and

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(4) A notice of the right of the recipient and the complainant (if any) to request a review of the letter of findings by the reviewing civil rights official.

(h) *Right to review of the letter of findings.* (1) A complainant or recipient may request that a complete review be made of the letter of findings within 30 days of receipt, by mailing or delivering to the reviewing civil rights official, Office of Fair Housing and Equal Opportunity, Washington, DC 20410, a written statement of the reasons why the letter of findings should be modified in light of supplementary information.

(2) The reviewing civil rights official shall send by certified mail, return receipt requested, a copy of the request for review to the other party, if any. Such other party shall have 20 days to respond to the request for review.

(3) The reviewing civil rights official shall either sustain or modify the letter of findings within 60 days of the request for review. The reviewing civil rights official's decision shall constitute the formal determination.

(4) If neither party requests that the letter of findings be reviewed, the responsible civil rights official shall, within fourteen (14) calendar days of the expiration of the time period in paragraph (h)(1) of this section, send a formal written determination of compliance or noncompliance to the recipient and copies to the award official.

(i) *Voluntary compliance time limits.* The recipient will have ten (10) calendar days from receipt of the formal determination of noncompliance within which to come into voluntary compliance. If the recipient fails to meet this deadline, HUD shall proceed under § 8.57.

(j) *Informal resolution/voluntary compliance—(1) General.* It is the policy of the Department to encourage the informal resolution of matters. The responsible civil rights official may attempt to resolve a matter through informal means at any stage of processing. A matter may be resolved by informal means at any time. If a letter of findings making a preliminary finding of noncompliance is issued, the responsible civil rights official shall attempt to resolve the matter by informal means.

(2) *Objectives of informal resolution/voluntary compliance.* In attempting informal resolution, the responsible civil rights official shall attempt to achieve a just resolution of the matter and to obtain assurances where appropriate, that the recipient will satisfactorily remedy any violations of the rights of any complainant and will take such action as will assure the elimination of any violation of this part or the prevention of the occurrence of such violation in the future. The terms of such an informal resolution shall be reduced to a written voluntary compliance agreement, signed by the recipient and the responsible civil rights official, and be made part of the file for the matter. Such voluntary compliance agreements shall seek to protect the interests of the complainant (if any), other persons similarly situated, and the public interest.

(k) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by this part, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of investigation, hearing or judicial proceeding arising thereunder.

[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988; 53 FR 34634, Sept. 7, 1988]

§ 8.57 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by other means authorized by law. Such other means may include, but are not limited to:

(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to

enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking;

(2) The initiation of debarment proceedings pursuant to 2 CFR part 2424; and

(3) Any applicable proceeding under State or local law.

(b) *Noncompliance with §8.50.* If an applicant or a recipient of assistance under a contract which is extended or amended on or after July 11, 1988, fails or refuses to furnish an assurance required under §8.50 or otherwise fails or refuses to comply with the requirements imposed by that section, Federal financial assistance may be refused under paragraph (c) of this section. The Department is not required to provide assistance during the pendency of the administrative proceeding under such paragraph (c), except where the assistance is due and payable under a contract approved before July 11, 1988.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:

(1) The responsible civil rights official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed under this part;

(3) The action has been approved by the Secretary; and

(4) The expiration of 30 days after the Secretary has filed with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate, or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in

which such noncompliance has been so found.

(d) *Notice to State or local government.* Whenever the Secretary determines that a State or unit of general local government which is a recipient of Federal financial assistance under title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301-5318) has failed to comply with a requirement of this part with respect to a program or activity funded in whole or in part with such assistance, the Secretary shall notify the Governor of the State or the chief executive officer of the unit of general local government of the noncompliance and shall request the Governor or the chief executive officer to secure compliance. The notice shall be given at least sixty days before:

(1) An order suspending, terminating, or refusing to grant or continue Federal financial assistance becomes effective under paragraph (c) of this section; or

(2) Any action to effect compliance by any other means authorized by law is taken under paragraph (a) of this section.

(e) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until:

(1) The responsible civil rights official has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) At least 10 days have elapsed since the mailing of such notice to the applicant or recipient. During this period, additional efforts shall be made to persuade the applicant or recipient to comply with this part and to take such corrective action as may be appropriate.

However, this paragraph shall not be construed to prevent an award official from utilizing appropriate procedures and sanctions established under the program to assure or secure compliance with a specific requirement of the

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program designed to effectuate the objectives of this part.

[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988, as amended at 72 FR 73491, Dec. 27, 2007]

§ 8.58 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 8.57(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action. The notice shall:

(1) Fix a date not less than 20 days after the date of the notice for the applicant or recipient to request the administrative law judge to schedule a hearing, or

(2) Advise the applicant or recipient that the matter has been scheduled for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set is a waiver of the right to a hearing under § 8.57(c) and consent to the making of a decision on the basis of available information.

(b) *Hearing procedures.* Hearings shall be conducted in accordance with 24 CFR part 180.

[53 FR 20233, June 2, 1988, as amended at 61 FR 52218, Oct. 4, 1996]

PART 9—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec.

9.101 Purpose.

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- 9.153 Distribution of accessible dwelling units.
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- 9.160 Communications.
- 9.170 Compliance procedures.

AUTHORITY: 29 U.S.C. 794; 42 U.S.C. 3535(d).

SOURCE: 59 FR 31047, June 16, 1994, unless otherwise noted.

§ 9.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 9.102 Applicability.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with disabilities in the United States.

§ 9.103 Definitions.

For purposes of this part:

Accessible: (1) When used with respect to the design, construction, or alteration of a facility or a portion of a facility other than an individual dwelling unit, means that the facility or portion of the facility when designed, constructed or altered, complies with applicable accessibility standards and can be approached, entered, and used

by individuals with physical disabilities. The phrase "accessible to and usable by" is synonymous with accessible.

(2) When used with respect to the design, construction, or alteration of an individual dwelling unit, means that the unit is located on an accessible route and, when designed, constructed, altered or adapted, complies with applicable accessibility standards, and can be approached, entered, and used by individuals with physical disabilities. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in § 9.151 is "accessible" within the meaning of this definition. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified individual with disabilities (e.g., a current occupant of such unit or of another unit under the control of the same agency, or an applicant on a waiting list), the unit will be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person.

Accessible route means a continuous unobstructed path connecting accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps and lifts.

ADA means the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 through 12213)

ADA Accessibility Guidelines (ADAAG) means the Accessibility Guidelines issued under the ADA, and which are codified in the Appendix to 39 CFR part 1191.

Adaptability means the ability of certain building, spaces and elements, such as kitchen counters, sinks, and grab bars, to be added or altered, to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disability. For example, in a unit adaptable for a person with impaired hearing, the wiring for visible emergency alarms may be in-

stalled but the alarms need not be installed until such time as the unit is made ready for occupancy by a person with impaired hearing.

Agency means the Department of Housing and Urban Development.

Alteration means a change to a building or facility or its permanent fixtures or equipment that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangements of the structural parts and changes or rearrangements in the plan configuration of walls and full-height partitions. Normal maintenance, re-roofing, painting, or wallpapering or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Assistant Secretary means the Assistant Secretary of Housing and Urban Development for Fair Housing and Equal Opportunity.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or communication skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or

her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Facility means all or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, rolling stock or other conveyances, or other real or personal property located on a site.

Historic properties means those properties that are listed or are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local government body.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term "illegal use of drugs" does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with disabilities means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, or-

ganic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus disease (symptomatic or asymptomatic), mental retardation, emotional illness, drug addiction and alcoholism.

(2) The term "individual with disabilities" does not include:

(i) An individual who is currently engaging in the illegal use of drugs, when the agency acts on the basis of such use. This exclusion, however, does not exclude an individual with disabilities who—

(A) Has successfully completed a supervised drug rehabilitation program, and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully, and is no longer engaging in such use;

(B) Is participating in a supervised rehabilitation program, and is no longer engaging in such use; or

(C) Is erroneously regarded as engaging in such use, but is not engaging in such use.

(ii) Except that it shall not violate this part for the agency to adopt or administer reasonable policies and procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraphs (2)(i) (A) and (B) of this definition is no longer engaging in the illegal use of drugs.

(iii) Nothing in paragraph (2) of this definition shall be construed to encourage, prohibit, restrict or authorize the conduct of testing for illegal use of drugs.

(iv) The agency shall not deny health services provided under titles I, II and III of the Rehabilitation Act of 1973 (29 U.S.C. 701 through 777f) to an individual with disabilities on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(3) For purposes of employment, the term "individual with disabilities" does not include:

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(1) An individual who has a currently contagious disease or infection and who, by reason of such disease or infection—

(A) Has been determined, in accordance with the provisions of §9.131, to pose a direct threat to the health or safety of other individuals, which threat cannot be eliminated or reduced by reasonable accommodation, or

(B) Is unable to perform the essential duties of the job, with or without reasonable accommodation; or

(ii) An individual who is an alcoholic and whose current use of alcohol prevents him or her from performing the duties of the job in question or whose employment would constitute a direct threat to the property or the safety of others by reason of his or her current alcohol abuse.

(4) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(5) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(6) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Multifamily housing project means a project containing five or more dwelling units.

Official or Responsible Official means the Assistant Secretary of HUD for Fair Housing and Equal Opportunity.

PDP housing facility means a housing facility administered under HUD's Property Disposition Program.

Project means the whole of one or more residential structures and appur-

tenant structures, equipment, roads, walks, and parking lots which are covered by a single mortgage or contract or otherwise treated as a whole by the agency for processing purposes, whether or not located on a common site.

Property Disposition Program (PDP) means the HUD program which administers the housing facilities that are either owned by the Secretary or where, even though the Secretary has not obtained title, the Secretary is mortgagee-in-possession. Such properties are deemed to be in the possession or control of the agency.

Qualified individual with disabilities means:

(1) With respect to any agency non-employment program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with disabilities who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other agency non-employment program or activity, an individual with disabilities who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) "Essential eligibility requirements" include stated eligibility requirements such as income, as well as other explicit or implicit requirements inherent in the nature of the program or activity, such as requirements that an occupant of a PDP multifamily housing facility be capable of meeting selection criteria and be capable of complying with all obligations of occupancy with or without supportive services provided by persons other than the agency.

(4) "Qualified person with disabilities" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by §9.140.

Replacement cost of the completed facility means the current cost of construction and equipment for a newly constructed housing facility of the size and type being altered. Construction

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and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities and administrative costs for project development activities.

Secretary means the Secretary of Housing and Urban Development.

Section 504 means section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794). As used in this part, section 504 applies only to programs or activities conducted by the agency and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

UFAS means the Uniform Federal Accessibility Standards, which implement the accessibility standards required by the Architectural Barriers Act (42 U.S.C. 4151 through 4157), and which are established at 24 CFR part 40, appendix A for residential structures, and 41 CFR 101-19.600 through 101-19.607, and appendix A to these sections, for non-residential structures.

§ 9.110 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects of those policies and practices, including regulations, handbooks, notices and other written guidance, that do not or may not meet the requirements of this part. To the extent modification of any such policies is required, the agency shall take the necessary corrective actions.

(b) The agency shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

- (1) A list of interested persons;
- (2) A description of the areas examined and any problems identified; and
- (3) A description of any modifications made or to be made.

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§ 9.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency. The agency shall make such information available to such persons in such manner as the Secretary finds necessary to apprise them of the protections against discrimination assured them by section 504 and this part. All publications and recruitment materials distributed to participants, beneficiaries, applicants or employees shall include a statement that the agency does not discriminate on the basis of disability. The notice shall include the name of the person or office responsible for the implementation of section 504.

§§ 9.112-9.129 [Reserved]

§ 9.130 General prohibitions against discrimination.

(a) No qualified individual with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any housing, aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with disabilities the opportunity to participate in or benefit from the housing, aid, benefit, or service;

(ii) Afford a qualified individual with disabilities an opportunity to participate in or benefit from the housing, aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with disabilities with any housing, aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate housing, aid, benefits, or services to individuals with disabilities or to any

class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with housing, aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with disabilities the opportunity to participate as a member of planning or advisory boards;

(vi) Deny a dwelling to an otherwise qualified buyer or renter because of a disability of that buyer or renter or a person residing in or intending to reside in that dwelling after it is sold, rented or made available; or

(vii) Otherwise limit a qualified individual with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the housing, aid, benefit, or service.

(2) For purposes of this part, housing, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with disabilities and for persons without disabilities, but must afford individuals with disabilities equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

(3) The agency may not deny a qualified individual with disabilities the opportunity to participate in programs or activities that are not separate or different, despite the existence of programs or activities that are permissibly separate or different for persons with disabilities.

(4) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(5) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with disabilities from, deny them the benefits of,

or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(6) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(7) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c)(1) Notwithstanding any other provision of this part, persons without disabilities may be excluded from the benefits of a program if the program is limited by Federal statute or Executive order to individuals with disabilities. A specific class of individuals with disabilities may be excluded from a program if the program is limited by Federal statute or Executive order to a different class of individuals.

(2) Certain agency programs operate under statutory definitions of "persons with disabilities" that are more restrictive than the definition of "individual with disabilities" contained in §9.103. Those definitions are not superseded or otherwise affected by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e) The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement that, based on disability, imposes inconsistent or contradictory prohibitions or limits upon the eligibility of qualified individuals with disabilities to receive services or to practice any occupation or profession.

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(f) The enumeration of specific forms of prohibited discrimination in paragraphs (b) and (d) of this section does not limit the general prohibition in paragraph (a) of this section.

§ 9.131 Direct threat.

(a) This part does not require the agency to permit an individual to participate in, or benefit from the goods, services, facilities, privileges, advantages and accommodations of that agency when that individual poses a direct threat to the health or safety of others.

(b) "Direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(c) In determining whether an individual poses a direct threat to the health or safety of others, the agency must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

§§ 9.132-9.139 [Reserved]

§ 9.140 Employment.

No qualified individual with disabilities shall, on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613 (subpart G), shall apply to employment in federally conducted programs or activities.

§§ 9.141-9.148 [Reserved]

§ 9.149 Program accessibility: discrimination prohibited.

Except as otherwise provided in § 9.150, no qualified individual with disabilities shall, because the agency's fa-

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cilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 9.150 Program accessibility: existing facilities.

(a) *General.* Except as otherwise provided in paragraph (e) of this section, the agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This section does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) In the case of historic properties, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 9.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, also shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of July 18, 1994 except that where structural changes in facilities are undertaken, such changes shall be made within three years of July 18, 1994, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of July 18, 1994, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the acces-

sibility of its programs or activities to individuals with disabilities;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

(e) The requirements of paragraphs (a), (b), and (c) of this section shall apply to the Property Disposition Programs. However, this section does not require HUD to make alterations to existing facilities that are part of the Property Disposition Programs unless such alterations are necessary to meet the needs of a current or prospective tenant during the time when HUD expects to retain legal possession of the facilities, and there is no alternative method to meet the needs of that current or prospective tenant. Nothing in this section shall be construed to require alterations to make facilities accessible to persons with disabilities who are expected to occupy the facilities only after HUD relinquishes legal possession.

§9.151 Program accessibility: new construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered and provide emergency egress so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements, and accessibility standards that apply to buildings covered by this section are those contained in the UFAS, except where the ADAAG provides for greater accessibility for the type of construction or alteration being undertaken, and in this case, the definitions, requirements and standards of the ADAAG shall apply.

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§ 9.152 Program accessibility: alterations of Property Disposition Program multifamily housing facilities.

(a) *Substantial alteration.* If the agency undertakes alterations to a PDP multifamily housing project that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the project shall be designed and altered to be readily accessible to and usable by individuals with disabilities. Subject to paragraph (c) of this section, a minimum of five percent of the total dwelling units, or at least one unit, whichever is greater, shall be made accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in paragraph (d) of this section is accessible for purposes of this section. An additional two percent of the units (but not less than one unit) in such a project shall be accessible for persons with hearing or vision impairments. If state or local requirements for alterations require greater action than this paragraph, those requirements shall prevail.

(b) *Other alteration.* (1) Subject to paragraph (c) of this section, alterations to dwelling units in a PDP multifamily housing project shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with disabilities. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph. Once two percent of the dwelling units in a project are readily accessible to or usable by individuals with hearing or vision impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph.

(2) Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities,

shall, to the maximum extent feasible, be made to be accessible to and usable by individuals with disabilities.

(c) The agency may establish a higher percentage or number of accessible units than that prescribed in paragraphs (a) or (b) of this section if the agency determines that there is a need for a higher percentage or number, based on census data or other available current data. In making such a determination, HUD shall take into account the expected needs of eligible persons with and without disabilities.

(d) The definitions, requirements, and accessibility standards that apply to PDP multifamily housing projects covered by this section are those contained in the UFAS, except where the ADAAG provides for greater accessibility for the type of alteration being undertaken, and, in this case, the definitions, requirements and standards of the ADAAG shall apply.

(e) With respect to multifamily housing projects operated by HUD, but in which HUD does not have an ownership interest, alterations under this section need not be made if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project.

§ 9.153 Distribution of accessible dwelling units.

Accessible dwelling units required by § 9.152 shall, to the maximum extent feasible, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that a qualified individual with disabilities' choice of living arrangements is, as a whole, comparable to that of other persons eligible for housing assistance under the same agency conducted program. This provision shall not be construed to require (but does allow) the provision of an elevator in any multifamily housing project solely for the purpose of permitting location of accessible units above or below the accessible grade level.

§ 9.154 Occupancy of accessible dwelling units.

(a) The agency shall adopt suitable means to assure that information regarding the availability of accessible

units in PDP housing facilities reaches eligible individuals with disabilities, and shall take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, the agency (or its management agent) before offering such units to an applicant without disabilities shall offer such unit:

(1) First, to a current occupant of another unit of the same project, or comparable projects under common control, having disabilities requiring the accessibility features of the vacant unit and occupying a unit not having such features, or, if no such occupant exists, then

(2) Second, to an eligible qualified applicant on the waiting list having a disability requiring the accessibility features of the vacant unit.

(b) When offering an accessible unit to an applicant not having disabilities requiring the accessibility features of the unit, the agency may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

§ 9.155 Housing adjustments.

(a) The agency shall modify its housing policies and practices as they relate to PDP housing facilities to ensure that these policies and practices do not discriminate, on the basis of disability, against a qualified individual with disabilities. The agency may not impose upon individuals with disabilities other policies, such as the prohibition of assistive devices, auxiliary aids, alarms, or guides in housing facilities, that have the effect of limiting the participation of tenants with disabilities in any agency conducted housing program or activity in violation of this part. Housing policies that the agency can demonstrate are essential to the housing program or activity will not be regarded as discriminatory within the meaning of this section if modifications would result in a fundamental alteration in the nature of the program or activity or undue financial and administrative burdens.

(b) The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

§ 9.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with disabilities.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries or members of the public by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to

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a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with §9.160 would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

§9.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Responsible Official shall coordinate implementation of this section.

(d) Persons may submit complete complaints to the Assistant Secretary for Fair Housing and Equal Oppor-

tunity, 451 Seventh St., SW., Washington, DC 20410, or to any HUD Area Office. The agency shall accept and investigate all complete complaints for which the agency has jurisdiction. All complete complaints shall be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause. For purposes of determining when a complaint is filed, a complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the agency. The agency shall acknowledge all complaints, in writing, within ten (10) working days of receipt of the complaint.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), is not readily accessible to and usable by individuals with disabilities. The agency shall delete the identity of the complainant from the copy of the complaint.

(g)(1) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Office of Fair Housing and Equal Opportunity shall complete the investigation of the complaint, attempt informal resolution, and if no informal resolution is achieved, issue a letter of findings. If a complaint is filed against the Office of Fair Housing and Equal Opportunity, the Secretary or a designee of the Secretary shall investigate and resolve the complaint through informal agreement or letter of findings.

(2) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant and the agency. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which

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the complainant and the respondent have agreed.

(3) If a complaint is not resolved informally, the Office of Fair Housing and Equal Opportunity or a person designated under this paragraph shall notify the complainant of the results of the investigation in a letter containing—

(i) Findings of fact and conclusions of law;

(ii) A description of a remedy for each violation found;

(iii) A notice of the right to appeal to the Secretary;

(h)(1) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 9.170(g). The Assistant Secretary or the person designated by the Secretary to decide an appeal of a complaint filed against the Office of Fair Housing and Equal Opportunity may extend this time for good cause.

(2) Timely appeals shall be accepted and processed by the Assistant Secretary. Decisions on an appeal shall not be issued by the person who made the initial determination.

(i) The Assistant Secretary or the person designated by the Secretary to decide an appeal of a complaint filed against the Office of Fair Housing and Equal Opportunity shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(j) The time limits cited in paragraphs (g) and (i) of this section may be extended with the permission of the Assistant Attorney General.

(k) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

PART 10—RULEMAKING: POLICY AND PROCEDURES

Subpart A—General

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Subpart B—Procedures

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AUTHORITY: 42 U.S.C. 3535(d).

SOURCE: 44 FR 1606, Jan. 5, 1979, unless otherwise noted.

Subpart A—General

§ 10.1 Policy.

It is the policy of the Department of Housing and Urban Development to provide for public participation in rulemaking with respect to all HUD programs and functions, including matters that relate to public property, loans, grants, benefits, or contracts even though such matters would not otherwise be subject to rulemaking by law or Executive policy. The Department therefore publishes notices of proposed rulemaking in the FEDERAL REGISTER and gives interested persons an opportunity to participate in the rulemaking through submission of written data, views, and arguments with or without opportunity for oral presentation. It is the policy of the Department that its notices of proposed rulemaking are to afford the public not less than sixty days for submission of comments. For some rules the Secretary will employ additional methods of inviting public participation. These methods include, but are not limited to, publishing Advance Notices of Proposed Rulemaking (ANPR), conducting public surveys, and convening public forums or panels. An ANPR will be used to solicit public

EPA Brownfields Grants, CERCLA Liability, and All Appropriate Inquiries



To be eligible for an EPA brownfields grant to address contamination at brownfields properties, eligible entities must demonstrate that they are not liable under CERCLA for the contamination at the site. Accordingly, eligible entities who may be considered “potentially responsible parties” under CERCLA must demonstrate they meet one of the liability protections or defenses set forth in CERCLA by establishing that they are (1) an innocent landowner, (2) a contiguous property owner, (3) a bona fide prospective purchaser, or (4) a government entity that acquired the property involuntarily through bankruptcy, tax delinquency, or abandonment, or by exercising its power of eminent domain.

To claim protection from liability as an innocent landowner, contiguous property owner, or bona fide prospective purchaser, property owners, including state and local governments, must conduct all appropriate inquiries prior to acquiring the property.

What is CERCLA?

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as “Superfund,” was established to address abandoned hazardous waste sites. Among other things, CERCLA establishes a liability scheme for determining who can be held accountable for releases of hazardous substances. CERCLA also establishes the authority for EPA’s Brownfields Program and sets forth which entities and properties are eligible for brownfields grants.

Can state and local governments be found liable for contamination at brownfields?

Yes. Under CERCLA, persons (including state and local governments) can be liable by virtue of property ownership, or by virtue of their actions with respect to a particular site. For sites from which there is a release or threatened release of hazardous substances, the categories of “potentially responsible parties” include any person or party who:

- Currently owns or operates the property, or owned or operated the property at the time of disposal of hazardous substances;
- Arranged for hazardous substances to be disposed of or transported to the site for disposal; or
- Transported hazardous substances to the site.

Applicants should note that CERCLA employs a “strict liability” scheme—that means it is without regard to fault. Accordingly, a person who owns a property from which there is a release of hazardous substances can be held liable just by virtue of ownership.

If I am applying for a brownfields grant, do I have to worry about CERCLA liability?

Yes. Brownfields grantees are prohibited from using grant money to pay response costs at a brownfield site for which the grantee is potentially liable under CERCLA.

Therefore, all brownfields grantees who may be potentially liable at the site for which they are seeking funds must demonstrate that they are not liable for the contamination that will be addressed by the grant, subgrant, or loan. Applicants who own or operate the property for which they are seeking funding, or who may have owned or operated the property at the time of disposal of hazardous substances, must demonstrate they fall within one of the liability protections.

Cleanup grant applicants in particular should take note of this prohibition. Because cleanup grantees are required to own a site to receive brownfields funding—and because owners of contaminated property are liable under CERCLA—cleanup grant applicants **must** demonstrate they meet one of the liability protections described above. Some grant applicants who do not own the property for which they are seeking funding, or who are not seeking site-specific grant funds, may not fall within one of the categories of “potentially responsible parties,” and thus may not have to demonstrate they meet a liability protection.

Please contact your Regional Brownfields representative if you are not sure whether you will need to demonstrate a liability protection to be eligible for a grant.

to conduct all appropriate inquiries prior to acquiring the property, but must exercise “due care” after acquiring the property (CERCLA §101(35)(A) and §§107(b)(3)(a – b)). [Note: One threshold criteria for applicants seeking cleanup grant funding is that a Phase I must be conducted prior to application submission. Accordingly, although state and local governments that acquired property involuntarily are not required to conduct all appropriate inquiries for purposes of establishing a liability protection, they may have to conduct all appropriate inquiries anyway to be eligible for a cleanup grant.]

What is “All Appropriate Inquiries”?

“All Appropriate Inquiries,” or AAI is the process of conducting due diligence or a Phase I Environmental Site Assessment to determine prior uses and ownership of a property and assess conditions at the property that may be indicative of releases or threatened releases of hazardous substances at, on, in, or to the property.

The standards and practices established as comprising “All Appropriate Inquiries” are set forth in regulations promulgated at 40 CFR Part 312.

EPA recognizes two ASTM International Standards as compliant with the AAI requirements: ASTM E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” and E2247-08 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.”

When must All Appropriate Inquiries be conducted?

- All Appropriate Inquiries must be conducted or updated within one year **prior to acquiring ownership of a property.**
- Certain aspects or provisions of All Appropriate Inquiries (i.e., interviews of current and past owners, the review

of government records, the on-site visual inspection, and searches for environmental cleanup liens) must be conducted or updated **within 180 days prior to acquiring ownership of a property.**

Who can perform All Appropriate Inquiries?

The individual who supervises or oversees the conduct of the AAI investigation and signs the final report required in the AAI regulation must meet the definition of an “Environmental Professional” provided in the AAI Final Rule (40 CFR §312.10).

A person that does not qualify as an “Environmental Professional” as defined in 40 CFR §312.10, may assist in the conduct of the investigation if he or she is under the responsible charge of a person meeting the definition.

What are “Continuing Obligations?”

After acquiring a property, to maintain the liability protections, landowners must comply with “continuing obligations” during their property ownership. The continuing obligations include:

1. Provide all legally required notices with respect to the discovery or release of a hazardous substance;
2. Exercise appropriate care with respect to the hazardous substances by taking reasonable steps to stop or prevent continuing or threatened future releases and exposures, and prevent or limit human and environmental exposure to previous releases;
3. Provide full cooperation, assistance, and access to persons authorized to conduct response actions or natural resource restoration;
4. Comply with land use restrictions and not impede the effectiveness of institutional controls; and
5. Comply with information requests and subpoenas.

Where can I get additional information?

For general information, see the EPA Brownfields website at: www.epa.gov/brownfields

For more information on the AAI requirements, see: <http://www.epa.gov/brownfields/regneg.htm>

For more information on continuing obligations, see:

<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-guide.pdf>

Contact Patricia Overmeyer at: Overmeyer.patricia@epa.gov

**Brownfields Fact Sheet
EPA Brownfields Grants,
CERCLA Liability,
and All Appropriate Inquiries**

**Solid Waste
and Emergency
Response (5105)**

**EPA 560-F-09-026
April 2009
www.epa.gov/brownfields**



Emergency Mortgage Assistance Program – Summary

Overview

The Dodd-Frank Wall Street Reform and Consumer Protection Act provided \$1 billion to HUD to implement the Emergency Homeowners Loan Program (EHLPP) Program. The program will offer a declining balance, deferred payment “bridge loan” (non-recourse, subordinate loan with zero interest) for up to \$50,000 to assist eligible homeowners with payments of arrearages, including delinquent taxes and insurance plus up to 24 months of monthly payments on their mortgage principal, interest, mortgage insurance premiums, taxes, and hazard insurance. HUD will assist borrowers in Puerto Rico and the 32 states otherwise not funded by Treasury’s Innovation Fund for Hardest Hit Housing Markets program, based on their relative unemployment measures. It is HUD’s intention for the program to begin taking applications from eligible homeowners by the end of the year.

Program Administration

There will be a dual delivery approach for program administration. The first approach will delegate some of the program administrative functions to designated third parties. The second approach will enable state housing finance agencies (HFAs) that operate substantially similar programs to engage in relief efforts on behalf of residents of their state.

- **Program Administration---Delegated approach:** HUD will delegate key program administration functions to separate external entities, while retaining program monitoring, compliance and long term note management functions internally (FHA and/or CPD). Delegations include:
 - Counseling Intermediary to Perform Intake, Eligibility Screening, and Outreach. HUD will enter into a cooperative agreement with NeighborWorks to have its network of housing counselors provide homeowner intake services.
 - Intake services shall include: (i) developing and disseminating program marketing materials, (ii) providing an overview of the program and eligibility requirements, (iii) conducting initial eligibility screening (including verifying income), (iv) counseling potential applicants, including providing information concerning available employment and training resources, (v) collecting and assembling homeowner documentation, (vi) submitting homeowner application, and (vii) providing transition counseling to explore with the

homeowner other loss mitigation options, including loan modification, short sales, deeds-in-lieu of foreclosure, or traditional sale of home.

- The counselors shall also be encouraged to conduct outreach to entities in local communities to provide information on assistance available to unemployed homeowners through this program and shall publicize the list of entities approved to assist potential applicants with applying to the program.,
- Fiscal Agent to perform funds control, payment distribution, and note processing functions. HUD will also to contract with an entity which has extensive loan servicing and funds control capabilities to provide general accounting and fiscal control services, including collecting payments from borrowers, distributing payments to servicers on a monthly basis, performing accounting, managing loan balances, and providing payoff information. The fiscal agent would also provide note processing function and services for the program such as recording liens, storing the note and handling the payoffs at the end of the program. Once the note/ mortgage is placed and the homeowner's final balance is determined, the loan servicing function will be transferred to HUD FHA for longer term management.
- **Program Administration -- Substantially similar state law approach:** State HFAs that operate loan assistance programs that are determined by HUD to be substantially similar to the EHRF program will receive allocations to fund emergency loans for borrowers in their states as well as payments to cover the administrative costs of performing the intake and housing counseling and fiscal agent functions (described above) directly or indirectly through subcontracts with third parties.

Allocation of Program Funds

- **Recipient Geography:** HUD will assist borrowers living in Puerto Rico and the 32 states otherwise not funded by Treasury's Innovation Fund for Hardest Hit Housing Markets program.
- **Allocation Amount:** An allocation amount will be reserved to assist homeowners living in each of these states. The total amount reserved will be based on the state's approximate share of unemployed homeowners with a mortgage relative to all unemployed homeowners with a mortgage (See attached allocation list).
- **Targeting Funds to Local Geographies:** HUD will provide information that identifies pockets within each of the designated states that have suffered the most from recent spikes in unemployment and/or mortgage delinquencies. HUD will encourage the use of program dollars in these hardest-hit areas.

Homeowner Eligibility and Program Operation

- **Income Thresholds:** Has a total pre-event household income equal to, or less than, 120 percent of the Area Median Income (AMI), which includes wage, salary, and self-employed earnings and income.
- **Significant Income Reduction:** Has a current gross income that is at least 15 percent lower than the pre-event income.¹
- **Employment type:** Both wage and salary workers and self-employed individuals are eligible.
- **Delinquency and Likelihood of Foreclosure:** Must be at least three months delinquent on payments and have received notification of an intention to foreclose. This requirement can be documented by any written communication from the mortgagee to the homeowner indicating at least three months of missed payments and the mortgagee's intent to foreclose. In addition, the homeowner can self-certify that there is a likelihood of initiation of foreclosure on the part of their mortgagee due to the homeowner being at least three months delinquent in their monthly payment.
- **Ability to Resume Repayment:** Has a reasonable likelihood of being able to resume repayment of the first mortgage obligations within 2 years, and meet other housing expenses and debt obligations when the household regains full employment, as determined by:
 - The homeowner must have a back-end ratio or DTI below 55% (principal, interest, taxes, insurance, revolving and fixed installment debt divided by total gross monthly income). For this calculation, gross income will be measured at the pre-event level.
- **Principal Residence:** Must reside in the mortgaged property as principal residence. The mortgaged property must also be a single family residence (1 to 4 unit structure or condominium unit).

Creation of HUD Note: After the first assistance payment is made on behalf of the homeowner, the fiscal agent will create an open-ended "HUD note" and a mortgage to be in the name of the Secretary HUD of sufficient size to accommodate the expected amount of assistance to be provided to homeowner.

Ongoing Qualification of Homeowner

- **Termination of Monthly Assistance:** Assistance is terminated and the homeowner resumes full responsibility for meeting the first lien mortgage payments in the event of any of the following circumstances:

¹ "Pre-event income" is defined as the income prior to the onset of unemployment, underemployment, or medical emergency, while "current income" is the income at the time of program application, as well as income during the period that the homeowner continues to receive assistance from the fund.

- The maximum loan (\$50,000) amount has been reached;
 - The homeowner fails to report changes in unemployment status or income;
 - The homeowner's income regains 85% or more of its pre-event level;
 - The homeowner no longer resides in, sells, or refinances the debt on the mortgaged property; or
 - The homeowner defaults on their portion of the current first lien mortgage loan payments.
- **Income re-evaluation:** After initial income verification at application intake, the homeowner shall be required to notify the fiscal agent of any changes in the household income and/or employment status at any point throughout the entire period of assistance.

Forms of Assistance

- **Use of Funds for Arrearages:** On behalf of the homeowner, the fiscal agent shall use loan funds to pay 100% of arrears (mortgage principal, interest, mortgage insurance premiums, taxes, hazard insurance, and ground rent, if any).
- **Homeowner Payments:** Homeowner contribution to monthly payment on first mortgage will be set at 31 percent of gross income at the time of application, but in no instance will it be less than \$25 per month.
- **Use of Funds for Continuing Mortgage Assistance:** The fiscal agent will make monthly mortgage payments to the servicer of the first lien mortgage in excess of the payments made by the homeowner.
- **Duration of Assistance:** If at any time the household's gross income increases to 85% or more of its pre-event level, assistance will be phased out by the fiscal agent over a two month period. In any event, assistance with monthly payments may not continue beyond 24 months.

Repayment Terms

- **Transition Counseling:** The designated counseling agent shall contact each homeowner that is approaching the last months of program eligibility and remains un/underemployed (3-6 months before the assistance ends) and require the homeowner to meet with a HUD approved counseling agent to explore other loss mitigation options, including loan modification, short sales, deeds-in-lieu of foreclosure, or traditional sale of home.
- **Repayment of HUD Note:** Following the last payment on behalf of the homeowner, the fiscal agent will process the homeowner's "HUD Note" and record a mortgage with a specific loan balance. The note and mortgage will be in the form of a five year declining balance, zero interest, nonrecourse loan, and the mortgage shall be in the form of a secured junior lien on the property.

- **Terms for Declining Balance Feature:** No payment is due on the note during the 5 year term so long as the assisted household maintains the property as principal residence and remains current in his or her monthly payments on the first mortgage loan. If the homeowner meets these two conditions, the balance due shall decline by twenty percent (20%) annually, until the note is extinguished and the junior loan is terminated.
- **Events Triggering Note Repayment:** The homeowner will be responsible for repayment of the applicable balance of the HUD note to the fiscal agent or its successor, if, at any time during the five year repayment period, any of the following events occur:
 - The homeowner no longer resides in the mortgaged property as a principal residence, but maintains ownership;
 - The homeowner defaults on its portion of the current mortgage; or
 - The homeowner receives net proceeds from selling or refinancing debt on the home. Net proceeds -- after paying outstanding applicable brokers fees, first balances (and second lien balances, as applicable), and an allowance of \$2,000 to the homeowner for relocation expenses when the home is sold -- will go towards paying down the HUD note. In the event that proceeds of a sale or loan refinance are not sufficient to repay the entire HUD note, the remaining applicable balance of the HUD note shall be considered to have been met, and the lien against the property shall be released.
- **Provisions for Underwater Homeowners:** At all stages of the program, “underwater” homeowners² will be encouraged to explore participation in short sale or short refinancing programs offered by their servicer and/or the federal government (*i.e.* Home Affordable Foreclosure Alternatives)³, which will not trigger repayment of the HUD note.

² Underwater homeowners are those with mortgage debt in excess of the market value of their home

³ Making Home Affordable.gov: <http://makinghomeaffordable.gov/hafa.html>



HUD NEWS

U.S. Department of Housing and Urban Development – Shaun Donovan, Secretary
Office of Public Affairs, Washington, DC 20410

HUD No. 10-162 F
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<http://www.hud.gov/news/index.cfm>

FOR RELEASE
Thursday
October 7, 2010

HUD ANNOUNCES ADDITIONAL SUPPORT TO HELP TEXAS HOMEOWNERS STRUGGLING WITH UNEMPLOYMENT

32 States and Puerto Rico Will Receive Funds Through HUD's Emergency Homeowners Loan Program

TEXAS - U.S. Department of Housing and Urban Development (HUD) Regional Administrator C. Donald Babers announced today that HUD will provide **\$135,418,959** to help struggling homeowners in Texas through its Emergency Homeowners Loan Program (EHLP). The Dodd-Frank Wall Street Reform and Consumer Protection Act, signed into law by President Obama in July, authorizes HUD to administer a \$1 billion Emergency Homeowners Loan Program, to provide assistance – for up to 24 months -- to homeowners who have experienced a substantial reduction in income due to involuntary unemployment, underemployment, or a medical condition and are at-risk of foreclosure. HUD will assist borrowers in 32 states and Puerto Rico not otherwise funded by Treasury's Hardest Hit Housing Fund program, based on the state's relative share of unemployed homeowners. It is HUD's intention for the program to begin taking applications from eligible homeowners by the end of the year.

"The Emergency Homeowner Loan Program will provide limited and targeted assistance to help working families get back on their feet and keep their home while they look for work," said Mr. Babers. "In crafting this new loan program, HUD built on the lessons learned from Treasury's Hardest Hit initiative to design and implement a program to assist struggling unemployed homeowners avoid preventable foreclosures. Together these two initiatives represent a combined \$8.6 billion investment to help struggling borrowers and in doing so further contribute to the Obama Administration's efforts to stabilize housing markets and communities across the country."

Who Will Be Helped

The program will complement existing Administration efforts to assist struggling homeowners – including the Home Affordable Modification and Hardest Hit Fund initiative administered by the U.S. Treasury Department. Under the EHLP:

- 1) the borrower must be at least three month delinquent in their payments and have a reasonable likelihood of being able to resume repayment of their mortgage payments and related housing expenses within two years.

- 2) the property must be the principle residence of the borrower, and eligible borrowers may not own a second home
- 3) the borrower must have suffered at least a 15 percent reduction in income and have been able to afford their mortgage payments prior to the event that triggered the loss income.

How They Will Be Helped

The HUD Emergency Homeowners Loan Program will offer a forgivable, deferred payment “bridge loan” (zero percent interest, non-recourse, subordinate loans) for up to \$50,000 to assist eligible borrowers with their mortgage arrearages and payments on their for mortgage principal, interest, mortgage insurance premiums, taxes and hazard insurance for up to 24 months.

There will be a dual delivery approach for program administration. The first approach will delegate some of the program’s administrative functions to a designated third party. The second approach will enable state housing finance agencies (HFAs) that operate substantially similar programs to engage in relief efforts on behalf of residents of their state:

- **Delegated approach:** HUD will delegate key program administration functions to NeighborWorks® America – an experienced and highly regarded national network of affiliated housing counseling agencies. Under the program, nonprofit housing counselors who are part of the National Foreclosure Mitigation Counseling Program administered by NeighborWorks® America will coordinate intake counseling, document preparation and outreach functions. HUD will also use its delegation authority to contract with an experienced entity to provide loan servicing and fiscal control functions such as collecting payments from homeowners, distributing payments to servicers, and managing loan balances.
- **Substantially similar state law approach:** State HFAs that operate loan assistance programs that are determined by HUD to be substantially similar to the EHLF will receive allocations to fund emergency loans for borrowers in their states as well as payments to cover the administrative costs of performing the intake and housing counseling and fiscal agent functions (described above) directly or indirectly through subcontracts with third parties.

###

HUD’s mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. HUD is working to strengthen the housing market to bolster the economy and protect consumers; meet the need for quality affordable rental homes; utilize housing as a platform for improving quality of life; build inclusive and sustainable communities free from discrimination; and transform the way HUD does business. More information about HUD and its programs is available on the Internet at www.hud.gov and espanol.hud.gov.



HUD Recovery Act Funds: City Snapshot - Houston, TX



**Total Funds to City
11/02/2010**

# of Grants	Obligations	Disbursements	% of Total Obligations Disbursed	Absolute Variance from Projected Disbursement	% Variance from Projected Disbursement
41	\$56,068,907	\$34,929,361	62.3%	\$6,479,527	

Community Development Fund Awards to Houston, TX: CDBG

Program Group	State	City	Recipient	# of Grants	Obligations	Disbursements	% of Total Obligations Disbursed	Projected Disb	Absolute Variance from Projected	% Variance from Projected Disbursement
CDBG	TX	Houston	Harris County	1	\$2,919,475	\$2,205,587	75.5%	\$483,963	\$1,721,624	355.7%
CDBG	TX	Houston	City of Houston	1	\$8,093,613	\$2,000,000	24.7%	\$1,341,682	\$658,318	49.1%

Community Development Fund Awards to Houston, TX: NSP2

Program Group	State	City	Recipient	# of Grants	Obligations	Disbursements	% of Total Obligations Disbursed	Projected Disb	Absolute Variance from Projected	% Variance from Projected Disbursement
N/A										

Homeless Prevention Fund Awards to Houston, TX: HPRP

Program Group	State	City	Recipient	# of Grants	Obligations	Disbursements	% of Total Obligations Disbursed	Projected Disb	Absolute Variance from Projected	% Variance from Projected Disbursement
HPRP	TX	Houston	Harris County	1	\$4,463,961	\$1,339,251	30.0%	\$1,110,633	\$228,618	20.6%
HPRP	TX	Houston	City of Houston	1	\$12,375,861	\$3,473,671	28.1%	\$3,079,114	\$394,557	12.8%

Public Housing Capital Fund Awards to Houston, TX: PHCF-f

Program Group	State	City	Recipient	# of Grants	Obligations	Disbursements	% of Total Obligations Disbursed	Projected Disb	Absolute Variance from Projected	% Variance from Projected Disbursement
PHCF-f	TX	Houston	City of Houston Housing Authority	1	\$7,864,011	\$6,775,973	86.2%	\$3,561,289	\$3,214,684	90.3%

Project Based Section 8 Rental Assistance Awards to Houston, TX: PBRA

Program Group	State	City	Recipient	# of Grants	Obligations	Disbursements	% of Total Obligations Disbursed	Projected Disb	Absolute Variance from Projected	% Variance from Projected Disbursement
PBRA	TX	Houston	Lakeside Square Apts	1	\$108,676	\$108,676	100.0%	\$100,246	\$8,430	8.4%
PBRA	TX	Houston	Chateau Village Apts	1	\$873,574	\$860,167	98.5%	\$805,811	\$54,356	6.7%
PBRA	TX	Houston	Seville Apartments Ltd	1	\$453,115	\$453,115	100.0%	\$446,287	\$6,828	1.5%
PBRA	TX	Houston	Garden City Apts	1	\$2,152,332	\$2,152,332	100.0%	\$2,119,897	\$32,435	1.5%
PBRA	TX	Houston	Republic Management	1	\$555,464	\$555,464	100.0%	\$547,093	\$8,371	1.5%
PBRA	TX	Houston	Woodland Christian Towers	1	\$259,259	\$259,259	100.0%	\$255,352	\$3,907	1.5%
PBRA	TX	Houston	Sweetwater Ha 55030011927900	2	\$280,164	\$280,164	100.0%	\$275,942	\$4,222	1.5%
PBRA	TX	Houston	Pines Of Woodforest	1	\$372,138	\$372,138	100.0%	\$368,018	\$4,120	1.1%
PBRA	TX	Houston	Empire Village Apartments	1	\$313,651	\$313,651	100.0%	\$310,179	\$3,472	1.1%
PBRA	TX	Houston	Sycamore Meadows Apart	1	\$2,656,810	\$2,656,810	100.0%	\$2,627,400	\$29,410	1.1%
PBRA	TX	Houston	Scott Plaza Apts	1	\$799,474	\$799,474	100.0%	\$790,624	\$8,850	1.1%
PBRA	TX	Houston	Northline Point Apartments	1	\$566,579	\$566,579	100.0%	\$560,307	\$6,272	1.1%
PBRA	TX	Houston	Alician Manor Apartments	1	\$242,684	\$242,684	100.0%	\$239,998	\$2,686	1.1%
PBRA	TX	Houston	Voa-comm Home Tx 4 Inc	1	\$36,912	\$36,912	100.0%	\$36,596	\$316	0.9%
PBRA	TX	Houston	Cypress Cottage Inc	1	\$34,101	\$34,101	100.0%	\$33,809	\$292	0.9%

PBRA	TX	Houston	Houston Heights Towers	1	\$95,760	\$95,760	100.0%	\$94,939	\$821	0.9%
PBRA	TX	Houston	Briarwood Apartments	1	\$124,425	\$124,425	100.0%	\$123,359	\$1,066	0.9%
PBRA	TX	Houston	Kings Arms Apartments	1	\$37,120	\$37,120	100.0%	\$36,802	\$318	0.9%
PBRA	TX	Houston	Rivercrest Apartments	1	\$72,324	\$72,324	100.0%	\$71,704	\$620	0.9%
PBRA	TX	Houston	Villa Main Apartments	1	\$310,934	\$310,934	100.0%	\$308,269	\$2,665	0.9%
PBRA	TX	Houston	So Houston Vista Apts	1	\$379,665	\$379,665	100.0%	\$376,411	\$3,254	0.9%
PBRA	TX	Houston	Pilgrim Place Apts	1	\$307,510	\$307,510	100.0%	\$304,875	\$2,635	0.9%
PBRA	TX	Houston	Wesley Square Apartments	1	\$508,032	\$508,032	100.0%	\$503,678	\$4,354	0.9%
PBRA	TX	Houston	The Pinemont	1	\$797,160	\$797,160	100.0%	\$790,328	\$6,832	0.9%
PBRA	TX	Houston	Goldberg B'nai B'rith	1	\$1,232,400	\$1,232,400	100.0%	\$1,221,839	\$10,561	0.9%
PBRA	TX	Houston	Salvation Army/william Booth Garden	1	\$470,421	\$470,421	100.0%	\$466,390	\$4,031	0.9%
PBRA	TX	Houston	Anna Dupree Terrace	1	\$764,676	\$764,676	100.0%	\$758,123	\$6,553	0.9%
PBRA	TX	Houston	Cleme Manor Apartments	1	\$1,378,504	\$1,378,504	100.0%	\$1,366,690	\$11,814	0.9%
PBRA	TX	Houston	Fawn Ridge-the Woodlands	1	\$473,748	\$473,748	100.0%	\$469,688	\$4,060	0.9%
PBRA	TX	Houston	Settegast Heights Village	1	\$877,800	\$877,800	100.0%	\$870,277	\$7,523	0.9%
PBRA	TX	Houston	Pmi Sterlingshire Apts	1	\$920,673	\$920,673	100.0%	\$912,783	\$7,890	0.9%
PBRA	TX	Houston	W Leo Daniels Tower	1	\$97,054	\$97,054	100.0%	\$96,222	\$832	0.9%
PBRA	TX	Houston	Villa Brazos Apts	1	\$315,084	\$315,084	100.0%	\$312,384	\$2,700	0.9%

Green Retrofit for Multifamily Housing Grant Awards to Houston, TX: AHGR

Program Group	State	City	Recipient	# of Grants	Obligations	Disbursements	% of Total Obligations Disbursed	Projected Disb	Absolute Variance from Projected Disbursement	% Variance from Projected Disbursement
AHGR	TX	Houston	Evergreen Village	1	\$612,436	\$17,185	2.8%	\$6,124	\$11,061	180.6%

Lead Hazard Reduction Grant Awards to Houston, TX: Healthy Homes Demonstration Grant

Program Group	State	City	Recipient	# of Grants	Obligations	Disbursements	% of Total Obligations Disbursed	Projected Disb	Absolute Variance from Projected Disbursement	% Variance from Projected Disbursement
Lead	TX	Houston	Harris County	1	\$871,327	\$262,878	30.2%	\$264,709	(\$1,831)	-0.7%



U.S. Department of Housing and Urban Development
Houston Field Office, Region VI
Office of Community Planning & Development
1301 Fannin, Suite 2200
Houston, Texas 77002
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www.hud.gov

Allocations for the City of Houston 2010	
Community Development Block Grant	\$32,769,402
HOME Investment Partnerships	\$14,066,375
Housing Opportunities for Persons with AIDS	\$7,793,944
Emergency Shelter Grants	\$1,329,099
Community Development Block Grant Recovery	\$8,093,613
Homeless Prevention and Rapid Re-housing	\$12,375,861
Neighborhood Stabilization Program	\$30,254,880
Subtotal FY2010	\$106,683,174
Neighborhood Stabilization Program 3 (To be awarded)	\$3,389,035
Grant Total	\$110,072,209





Office of Community Planning and Development
Integrated Disbursement and Information System
Status of CDBG-R Grant Funds
U.S. Department of Housing and Urban Development

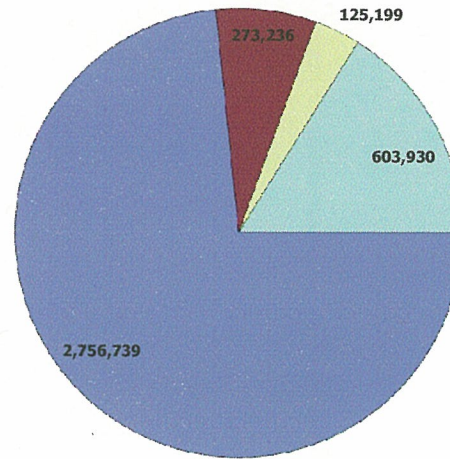
DATE: 11-04-10
TIME: 16:12
PAGE: 1

Field Office	Grantee	Grant Number	Authorized Amount	\$ Funded to Activities	% of Authorized	\$ Drawn	% of Authorized
HOUSTON	HOUSTON	B09MY480018	\$8,093,613.00	\$2,480,000.00	30.64%	\$2,000,000.00	24.71%
	Subtotal		\$8,093,613.00	\$2,480,000.00	30.64%	\$2,000,000.00	24.71%
			\$8,093,613.00	\$2,480,000.00	30.64%	\$2,000,000.00	24.71%



Grantee Name: HOUSTON,TX
Grant Number: S09MY480002
Grant Amount: \$12,375,861.00

Disbursements by HPRP Activity Type

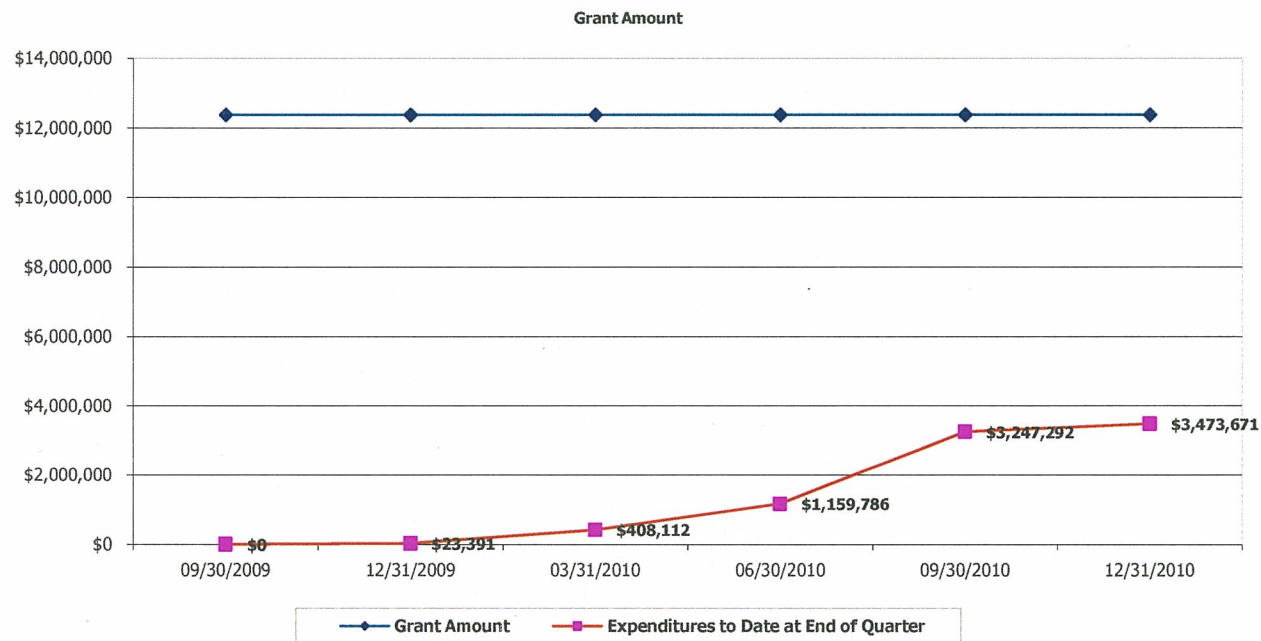


Activity Type	Total Committed to Activities	% of Grant Committed	Drawn Amount	% of Grant Drawn	Available to Commit
Homeless Prevention	6,845,843.00	55.32	2,756,738.95	22.28	16,649.00
Administration	618,793.00	5.00	273,235.78	2.21	
Data Collection and Evaluation	495,000.00	4.00	125,198.78	1.01	
Homeless Assistance/Rapid Re-Housing	4,399,576.00	35.55	603,929.63	4.88	
Grant Totals:	12,359,212.00	99.87	3,759,103.14	30.37	

* - Denotes more than 5% of grant has been committed to Admin activities.

** - Denotes more than 5% of grant has been drawn to Admin activities.

Expenditures to Date at End of Quarter



Quarter End Date	Expenditures for the	Expenditures to Date at End	% Drawn	% Drawn to Date
09/30/2009	0.00	0.00	0.00	0.00
12/31/2009	23,391.21	23,391.21	0.19	0.19
03/31/2010	384,720.33	408,111.54	3.11	3.30
06/30/2010	751,673.99	1,159,785.53	6.07	9.37
09/30/2010	2,087,506.70	3,247,292.23	16.87	26.24
12/31/2010	226,378.57	3,473,670.80	1.83	28.07

Note: This report does not include vouchers not yet submitted to LOCCS.

number for this notice (USCG-2010-0212) in the "Keyword" box, and then click "Search."

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make brief oral presentations during the meeting. If you would like to make an oral presentation at a meeting, please notify the Assistant to the Chairman no later than November 12, 2010. Written material (no more than 2 full pages) for distribution at the meeting should reach the Coast Guard no later than November 12, 2010. If you would like a copy of your material (no more than 2 full pages) distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Assistant to the Chairman no later than November 12, 2010.

The transcript of the meeting, including all comments received during the meeting, will be posted to <http://www.regulations.gov> and will include any personal information you have provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Chairman as soon as possible.

Authority: This notice is issued under authority of 5 U.S.C. 552(a).

Dated: October 14, 2010.

J.R. Caplis,

Captain, U.S. Coast Guard, Chief, Office of Incident Management & Preparedness.

[FR Doc. 2010-26287 Filed 10-18-10; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5447-N-01]

Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of allocation method, waivers granted, alternative requirements applied, and statutory program requirements.

SUMMARY: This notice advises the public of the allocation formula and allocation amounts, the list of grantees, alternative requirements, and the waivers of regulations granted to grantees under Section 2301(b) of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, approved July 30, 2008) (HERA), as amended, and an additional allocation of funds provided under Section 1497 of the Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, approved July 21, 2010) (Dodd-Frank Act) for additional assistance in accordance with the second undesignated paragraph under the heading 'Community Planning and Development—Community Development Fund' in Title XII of Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5, approved February 17, 2009) (Recovery Act), as amended, for the purpose of assisting in the redevelopment of abandoned and foreclosed homes. Except where provided for otherwise, these amounts are distributed based on funding formulas for such amounts established by the Secretary in accordance with HERA.

The additional allocation represents the third round of Neighborhood Stabilization Program funding and is referred to throughout this notice as NSP3. HERA provided a first round of formula funding to States and units of general local government, and is referred to herein as NSP1. The Recovery Act provided a second round of funds awarded by competition and is referred to herein as NSP2. The three rounds of funding are collectively referred to as NSP. As described in the Supplementary Information section of this notice, HUD is authorized by statute to specify alternative requirements and make regulatory waivers for this purpose. This notice also notes statutory issues affecting program design and implementation.

Note: This notice is intended to provide unified program requirements for grantees of the two formula NSP grant programs, NSP1 and NSP3. The allocation and application information under Section I.A and Section I.B below is only applicable to NSP3 grants. For NSP1, HUD awarded grants to a total of 309 grantees including the 55 states and territories and selected local governments to stabilize communities hardest hit by foreclosures and delinquencies. For the allocation formula and application process for NSP1, please see the October 6, 2008 **Federal Register** Notice (73 FR 58330), as amended by the June 19, 2009 "Bridge" Notice (74 FR 29223), and Appendix A attached hereto. For NSP2, HUD awarded a combined total \$1.93 billion in NSP2 grants to 56 grantees nationwide on January 14,

2010. Funds under NSP2 were distributed by competition under criteria described in the May 4, 2009 Notice of Funding Availability. Where requirements differ between the rounds of funding, it is so noted.

DATES: *Effective Date:* October 19, 2010.

FOR FURTHER INFORMATION CONTACT:

Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339. FAX inquiries may be sent to Mr. Gimont at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Program Background and Purpose

Recipients will use the funds awarded under this notice to stabilize neighborhoods whose viability has been, and continues to be, damaged by the economic effects of properties that have been foreclosed upon and abandoned. In 2008, Congress appropriated funds for neighborhood stabilization under HERA. In 2009, Congress appropriated additional neighborhood stabilization funds under the Recovery Act. In 2010, Congress appropriated a third round of neighborhood stabilization funds in the Dodd-Frank Act.

When referring to a provision of the first appropriations statute, this notice will refer to HERA; when referring to a provision of the second appropriations statute, this notice will refer to the Recovery Act; and when referring to the third appropriations statute this notice will refer to the Dodd-Frank Act. When referring to the grants, grantees, assisted activities, and implementation rules under the Dodd-Frank Act, this notice will use the term "NSP3." When referring to the grants, grantees, assisted activities, and implementation rules under the Recovery Act, this notice will use the term "NSP2". When referring to the grants, grantees, assisted activities, and implementation rules under HERA, this notice will use the term "NSP1." Collectively, the grants, grantees, assisted activities, and implementation rules under these three rounds of funding is referred to as NSP. NSP is a component of the Community Development Block Grant (CDBG) program (authorized under Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) (HCD Act)).

Program Principles

Programs under NSP should aim to integrate the following principles:

- Retain CDBG distinctive requirements. Congress gave HUD broad waiver and alternative requirement authority, which HUD used in designing NSP program requirements. However, distinctive characteristics of the CDBG program including the objectives of the HCD Act, financial accountability, local citizen participation and information, grantee selection of activities within broad Federal policy parameters, and income targeting of beneficiaries were retained. All of these elements are required in NSP1, NSP2, and NSP3.

- Target and reconnect neighborhoods. Invest funds in programs and projects that will revitalize targeted neighborhood(s) and reconnect those targeted neighborhoods with the economy, housing market, and social networks of the community and metropolitan area as a whole.

- Rapidly arrest decline. Support NSP uses and activities that will rapidly arrest the decline of a targeted neighborhood(s) that has been negatively affected by abandoned or foreclosed properties.

- Assure compliance with the NSP "deep targeting" requirement. No less than 25 percent of the funds shall be used to house individuals and families whose incomes do not exceed 50 percent of area median income.

- Ensure longest feasible continued affordability. Invest in affordable housing that will remain desirable and affordable for the longest feasible period.

- Support projects that optimize economic activity, and the number of jobs created or retained or that will provide other long-term economic benefits.

- Build inclusive and sustainable communities free from discrimination.

- Coordinate planning and resources. Integrate neighborhood stabilization programs with other Federal policy priorities and investments, including energy conservation and efficiency, sustainable and transit-oriented development, integrated metropolitan area-wide planning and coordination, improvements in public education, and access to healthcare.

- Leverage resources and remove destabilizing influences. Augment neighborhood stabilization programs with other Federal, public and private resources. Eliminate destabilizing influences, such as blighted homes, that can prevent programs from producing results.

- Set goals. Set aggressive, but achievable, goals for outputs and outcomes.

- Ensure accountability. Ensure accountability for all programs, keep citizens actively informed, and provide all required NSP reporting elements.

Objectives and Outcomes

1. *Objectives.* The primary objective of the CDBG program is the development of viable urban communities, by providing decent housing, a suitable living environment, and economic opportunity, principally for persons of low- and moderate-income. NSP grantees must strive to meet this objective in neighborhoods that are in decline (or further decline) due to the negative effects of a high number and percentage of homes that have been foreclosed upon. The first goal is to arrest the decline. Then the grantee must stabilize the neighborhood and position it for a sustainable role in a revitalized community.

2. *Outcomes.* Measurable NSP short term program outcomes may include, but are not limited to:

- Arresting decline in home values based on average sales price in targeted neighborhoods, and

- Reduction or elimination of vacant and abandoned residential property in targeted neighborhoods.

The long term outcomes may include, but are not limited to:

- Increased sales of residential property in targeted neighborhoods, and
- Increased median market values of real estate in targeted neighborhoods.

Authority To Provide Alternative Requirements and Grant Regulatory Waivers

The Dodd-Frank Act states that, except where provided for otherwise, assistance shall be provided in accordance with the same provisions applicable under the NSP2 authorization. In turn, the Recovery Act provides that assistance shall be made available as authorized under HERA. The Recovery Act authorizes the Secretary to specify waivers and alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use of funds except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including lead-based paint), upon a finding that such a waiver is necessary to expedite or facilitate the use of such funds.

The Secretary finds that the following alternative requirements are necessary to expedite the use of these funds for their required purposes.

Except as described in this notice, statutory and regulatory provisions governing the CDBG program, including those at 24 CFR part 570 subpart I for states, and those at 24 CFR part 570 subparts A, C, D, J, K, and O for CDBG entitlement communities, as appropriate, shall apply to the use of these funds. The State of Hawaii will be allocated funds and will be subject to part 570, subpart I, as modified by this notice. Other sections of the notice provide further details of the changes, the majority of which deal with adjustments necessitated by statutory provisions, simplify program rules to expedite administration, or relate to the ability of state grantees to act directly instead of solely through distribution to local governments. Additional guidance and technical assistance will be available at <http://www.hud.gov/nspta>.

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I. Allocations

A. *Formula: Allocation.* Grants awarded under NSP1 were allocated to States and local governments according to the formula described in Attachment A. The Dodd-Frank Act makes available an additional \$1 billion that is generally to be construed as CDBG program funds (NSP3) for the communities and in the amounts listed in Attachment B to this notice.

B. *Formula: Reallocation.*

1.a. *Failure to Apply (NSP3).* To expedite the use of NSP3 funds, the Department is specifying alternative requirements to 42 U.S.C. 5306(c). If a unit of general local government receiving an allocation of NSP3 funds under this notice (as designated in Attachment B) fails to submit a substantially complete application for its grant allocation by March 1, 2011, or submits an application for less than the total allocation amount, HUD will notify the jurisdiction of the cancellation of all or part of its allocation amount and proceed to reallocate the funds to the state in which the jurisdiction is located.

b. If a state or insular area receiving an allocation of funds under this notice fails to submit a substantially complete application for its allocation by March 1, 2011, or submits an application for less than the total allocation amount, HUD will notify the state or insular area of the reduction in its allocation amount and proceed to reallocate the funds to the 10 highest-need states based on original rankings of need.

2.a. *Failure to Meet 18-Month Obligation Deadline (NSP1).* Consistent with the August 23, 2010 Notice of NSP Reallocation Process Changes (Docket No. FR-5435-N-01), HUD will block each grantee's ability to obligate NSP1 grant funds in the Disaster Recovery Grant Reporting System (DRGR) on the first business day after the statutory 18-month deadline for use of funds. HUD will notify the grantee of this action by electronic mail. Grantees will not be able to obligate grant funds after the deadline without requesting and receiving permission from HUD, and HUD determines that the grantee is not high risk consistent with this notice. The grantee will still be able to expend grant funds obligated before the deadline. Receipt and use of any program income will also be unaffected.

b. Grantees that fail to obligate an amount equal to or greater than its initial grant amount may submit information to HUD, for up to 30 days following its 18-month deadline, documenting any additional obligation of funds not already recorded in the

DRGR system and demonstrating to HUD that the obligation occurred on or before the 18-month deadline. Before the 18-month deadline, each grantee should also review its recorded obligations and notify HUD within 30 days following the deadline of any necessary adjustments to the amount and the reason for such an adjustment. For example, the grantee has become aware that an obligation amount that was previously recorded for an acquisition will not proceed, therefore a downward adjustment is necessary.

c. After the deadline, if a grantee needs to decrease or increase the amount of grant funds obligated to an activity, it must first ask HUD to remove the DRGR block on changing the amount obligated. If the amount of decrease is more than 15 percent of the obligation for any activity, the grantee must submit to HUD a written request that clearly demonstrates with compelling information that factors beyond the grantee's reasonable control caused the need to adjust after the deadline. If HUD agrees to grant the request, it will restore the grantee's ability to obligate grant funds in DRGR. If HUD does not grant the request, the grantee must either complete the activity as originally obligated or the amount previously obligated for that activity will be recaptured. HUD may also remove the obligations block following risk assessment of the grantee or a review of some or all of a grantee's obligation documentation.

d. Before HUD determines the appropriate corrective action or recaptures grant funds, HUD will review the submitted information, consider the grantee's capacity as described in 24 CFR 570.905 and 24 CFR 570.493, and the grantee's continuing need for the funds.

e. Following the review and consistent with the procedures described in 24 CFR 570.900(b), HUD will proceed to notify the grantee of the selected corrective action it is required to undertake.

f. HUD will recapture and reallocate up to \$19.6 million from any state grantee with unused NSP1 grant funds. Additional corrective actions may be taken related to any amount of unused funds greater than \$19.6 million.

g. HUD will reallocate recaptured NSP1 grant funds in accordance with the reallocation formula described in a separate reallocation notice. A grantee receiving a reallocation must apply for the grant in accordance with the NSP1 Notice or this notice, as applicable. A nonentitlement grantee that is not required to submit a consolidated plan to HUD under the CDBG program will

prepare an abbreviated plan. The substance of an abbreviated plan must include all the required elements that entitlement communities provide as part of an NSP Action Plan substantial amendment as described under Section II.B.2 of the NSP1 Notice or this Notice, as applicable.

h. Each grantee must meet the statutory requirement to expend 25 percent of its grant amount for activities that will provide housing for households whose income is at or under 50 percent of area median income. This cannot occur unless the funds are first obligated to activities for this purpose, or program income is received and used for eligible activities. Therefore, if a grantee fails to obligate or record program income use of at least 25 percent of its original grant amount for activities that will provide housing for households whose income is at or under 50 percent of area median income, HUD may issue a concern or a finding of noncompliance. Consistent with the procedures described in 24 CFR 570.900(b), HUD will require as a corrective action that the grantee either adjust its remaining NSP1 planned activities to ensure that 25 percent of the original NSP1 formula grant amount and program income supports activities providing housing to households with incomes at or under 50 percent of area median income, or make a firm commitment to provide such housing with nonfederal funds in an amount sufficient to offset any deficiency to comply with the requirement before the expenditure deadline for the NSP1 grant.

i. The NSP1 Notice allows each grantee to use up to 10 percent of its NSP1 grant for general administration and planning activities. If HUD recaptures funds from a grant, this percentage limitation will still apply to the remaining grant funds, reducing the amount available for administration activities.

3. *Failure to Meet Expenditure Deadline for NSP3.*

NSP3 grantees must expend 50 percent of their grants within 2 years and 100 percent of their grants within 3 years. HUD will recapture and reallocate the amount of funds not expended by those deadlines or provide for other corrective action(s) or sanction. Further guidance will be issued prior to the deadline.

II. Alternative Requirements and Regulatory Waivers

This section of the notice briefly provides a justification for alternative requirements, where additional explanation is necessary, and describes

the necessary basis for each regulatory waiver. This section also highlights some of the statutory requirements applicable to the grants. This background narrative is followed by the NSP requirements. While program requirements across the three rounds of NSP funding are similar, certain requirements differ in accordance to statutory provisions.

Each grantee eligible for an NSP grant that already receives annual CDBG allocations has carried out needs hearings, has a consolidated plan, an annual action plan, a citizen participation plan, a monitoring plan, an analysis of impediments to fair housing choice, and has made CDBG certifications. The consolidated plan already discusses housing needs related to up to four major grant programs: CDBG, HOME, Emergency Shelter Grants (ESG), and Housing Opportunities for Persons with AIDS (HOPWA). A grantee's annual action plan describes the activities budgeted under each of those annual programs.

HUD is treating a state and entitlement grantee's use of its NSP grant to be a substantial amendment to its current approved consolidated plan and 2010 annual action plan. The NSP grant is a special CDBG allocation to address the problem of abandoned and foreclosed homes. Treating NSP3 as a substantial amendment will expedite the distribution of NSP3 funds, while ensuring citizen participation on the specific use of the funds. HUD is waiving the consolidated plan regulations on the certification of consistency with the consolidated plan to the extent necessary to mean NSP funds will be used to meet the congressionally identified needs of abandoned and foreclosed homes in the targeted areas set forth in the grantee's substantial amendment. In addition, HUD is waiving the consolidated plan regulations to the extent necessary to adjust reporting to fit the requirements of HERA and the use of DRGR.

Non-entitlement local government grantees receiving NSP3 funds that are not required to submit a consolidated plan to HUD under the CDBG program will prepare an abbreviated plan. The substance of an abbreviated plan must include all the required elements that entitlement communities provide as part of an NSP Action Plan substantial amendment as described under Section II.B.2.

The waivers, alternative requirements, and statutory changes apply only to the grant funds appropriated under NSP and not to the use of regular formula allocations of CDBG, even if they are used in conjunction with NSP funds for

a project. They provide expedited program implementation and implement statutory requirements unique to the covered NSP appropriations.

A. Definitions for Purposes of the Neighborhood Stabilization Program

Background

Certain terms are used in HERA that are not used in the regular CDBG program, or the terms are used differently in HERA and the HCD Act. In the interest of clarity of administration, HUD is defining these terms in this notice for all grantees, including states. For the same reason, HUD is also defining eligible fund uses for all grantees, including states. States may define other program terms under the authority of 24 CFR 570.481(a), and will be given maximum feasible deference in accordance with 24 CFR 570.480(c) in matters related to the administration of their NSP programs.

Requirement

Abandoned. A home or residential property is abandoned if either (a) mortgage, tribal leasehold, or tax payments are at least 90 days delinquent, or (b) a code enforcement inspection has determined that the property is not habitable and the owner has taken no corrective actions within 90 days of notification of the deficiencies, or (c) the property is subject to a court-ordered receivership or nuisance abatement related to abandonment pursuant to state or local law or otherwise meets a state definition of an abandoned home or residential property.

Blighted structure. A structure is blighted when it exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare.

CDBG funds. CDBG funds means, in addition to the definition at 24 CFR 570.3, grant funds distributed under this notice.

Current market appraised value. The current market appraised value means the value of a foreclosed upon home or residential property that is established through an appraisal made in conformity with either: (1) The appraisal requirements of the URA at 49 CFR 24.103, or (2) the Uniform Standards of Professional Appraisal Practice (USPAP), or (3) the appraisal requirements of the Federal Housing Administration (FHA) or a government sponsored enterprise (GSE); and the appraisal must be completed or updated within 60 days of a final offer made for

the property by a grantee, subrecipient, developer, or individual homebuyer. However, if the anticipated value of the proposed acquisition is estimated at \$25,000 or less, the current market appraised value of the property may be established by a valuation of the property that is based on a review of available data and is made by a person the grantee determines is qualified to make the valuation.

Date of Notice of Foreclosure. For purposes of the NSP tenant protection provisions described at Section K, the date of notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed. If none of these events occur in the acquisition of a foreclosed property (e.g. in a short sale), in order to ensure fair and equitable treatment of *bona fide* tenants and consistency with the NSP definition of foreclosed, the date of notice of foreclosure shall be deemed to be the date on which the property is acquired for the NSP-assisted project. **Note:** This definition does not affect or otherwise alter the definition of "foreclosed" as provided in this notice.

Foreclosed. A home or residential property has been foreclosed upon if any of the following conditions apply: (a) The property's current delinquency status is at least 60 days delinquent under the Mortgage Bankers of America delinquency calculation and the owner has been notified; (b) the property owner is 90 days or more delinquent on tax payments; (c) under state, local, or tribal law, foreclosure proceedings have been initiated or completed; or (d) foreclosure proceedings have been completed and title has been transferred to an intermediary aggregator or servicer that is not an NSP grantee, contractor, subrecipient, developer, or end user.

Land bank. A land bank is a governmental or nongovernmental nonprofit entity established, at least in part, to assemble, temporarily manage, and dispose of vacant land for the purpose of stabilizing neighborhoods and encouraging re-use or redevelopment of urban property. For the purposes of NSP, a land bank will operate in a specific, defined geographic area. It will purchase properties that have been foreclosed upon and maintain, assemble, facilitate redevelopment of, market, and dispose of the land-banked properties. If the land bank is a governmental entity, it may also maintain foreclosed property that it does not own, provided it charges the owner of the property the full cost

of the service or places a lien on the property for the full cost of the service.

Subrecipient. Subrecipient shall have the same meaning as at the first sentence of 24 CFR 570.500(c). This includes any nonprofit organization (including a unit of general local government) that a state awards funds to.

Use [for the purposes of HERA section 2301(c)(1)]. Funds are used when they are obligated by a state, unit of general local government, or any subrecipient thereof, for a specific NSP activity; for example, for acquisition of a specific property. Funds are obligated for an activity when orders are placed, contracts are awarded, services are received, and similar transactions have occurred that require payment by the state, unit of general local government, or subrecipient during the same or a future period. Note that funds are not obligated for an activity when subawards (e.g., grants to subrecipients or to units of local government) are made.

Vicinity. For the purposes of NSP3, HUD defines "vicinity" as each neighborhood identified by the NSP3 grantee as being the areas of greatest need.

B. NSP3 Pre-Grant Process

Background

With this notice, HUD is establishing the NSP3 allocation formula, including reallocation provisions, and announcing the distribution of funds. CDBG grantees receiving NSP3 allocations may immediately begin to prepare and submit action plan substantial amendments for NSP3 funds, in accordance with this notice. (Insular areas should follow the requirements for entitlement communities.) Non-entitlement local government grantees will follow entitlement requirements except for the submission of an abbreviated plan rather than a substantial amendment or as otherwise explained in this notice.

To receive NSP3 funding, each grantee listed in Attachment B must submit an action plan substantial amendment or abbreviated plan to HUD in accordance with this notice by March 1, 2011.

HUD encourages each grantee to carry out its NSP activities in the context of a comprehensive plan for the community's vision of how it can make its neighborhoods not only more stable, but also more sustainable, inclusive, competitive, and integrated into the overall metropolitan fabric, including access to transit, affordable housing, employers, and services. HUD also

encourages grantees to incorporate green and sustainable development practices, such as the examples in Attachment C.

HUD encourages each local jurisdiction receiving an allocation to carefully consider its administrative capacity to use the funds within the statutory deadline.

Jurisdictions may cooperate to carry out their grant programs through a joint request to HUD. HUD is providing regulatory waivers and alternative requirements to allow joint requests among units of general local government and to allow joint requests between units of general local government and a state. Any two or more contiguous units of general local government that are in the same metropolitan area and that are eligible to receive an NSP grant may instead make a joint request to HUD to implement a joint NSP program. A jurisdiction need not have a joint agreement with an urban county under the regular CDBG entitlement program to request a joint program for NSP funding. Similarly, any community eligible to receive an NSP grant may instead make a request for a joint NSP program with its state. An NSP joint request under a cooperation agreement results in a single combined grant and a single action plan substantial amendment. Potential requestors should contact HUD as soon as possible (as far as possible in advance of publishing a proposed NSP substantial amendment) for technical guidance. The requestors will specify which jurisdiction will receive the funds and administer the combined grant on behalf of the requestors; in the case of a joint request between a local government jurisdiction and a state, the state will administer the combined grant. (Grantees choosing this option should consider the Consolidated Plan and citizen participation implications of this approach. The lead entity's substantial amendment or abbreviated plan will cover any participating members. The citizen participation process must include citizens of all jurisdictions participating in the joint NSP program, not just those of the lead entity.)

Given the rule of construction in HERA that NSP funds generally are construed as CDBG program funds, subject to CDBG program requirements, HUD generally is treating NSP3 funds as a special allocation of Fiscal Year (FY) 2010 CDBG funding. This has important consequences for local governments presently participating in an existing urban county program, and for metropolitan cities that have joint agreements with urban counties. HUD will consider any existing cooperation agreements between a local government

and an urban county governing FY2010 CDBG funding (for purposes of either an urban county or a joint program) to automatically cover NSP funding as well. These cooperation agreements will continue to apply to the use of NSP funds for the duration of the NSP grant, just as cooperation agreements covering regular CDBG Entitlement program funds continue to apply to any use of the funds appropriated during the 3-year period covered by the agreements. For example, a local government presently has a cooperation agreement covering a joint program or participation in an urban county for Federal FYs 2009, 2010 and 2011. The local government may choose to discontinue its participation with the county at the end of the applicable qualification period for purposes of regular CDBG entitlement funding. However, the county will still be responsible for any NSP3 projects funded in that community, and for any NSP3 funding the local government receives from the county, until those funds are expended and the funded activities are completed.

A third method of cooperating is also available. A jurisdiction may choose to apply for its entire grant, and then enter into a subrecipient agreement with another jurisdiction or nonprofit entity to administer the grant. In this manner, for example, all of the grantees operating in a single metropolitan area could designate the same land-bank entity (or the state housing finance agency) as a subrecipient for some or all of their NSP activities.

Each NSP3 grantee will have until March 1, 2011, to complete and submit a substantial amendment to its annual action plan or an abbreviated plan. A grantee that wishes to submit its action plan amendment to HUD electronically in the DRGR system rather than by paper may do so by contacting its local field office for the DRGR submission directions. Paper submissions to HUD also will be allowed, although each grantee must set up its action plan in DRGR prior to the deadline for the first required performance report after receiving a grant.

HUD encourages grantees, during development of their action plan amendments or abbreviated plans, to contact HUD field offices for guidance in complying with these requirements, or if they have any questions regarding meeting grant requirements.

Normally, in the CDBG program, a grantee takes at least 30 days soliciting comment from its citizens before it submits an annual action plan to HUD, which then has 45 days to accept or reject the plan. To expedite the process and to ensure that the NSP grants are

awarded in a timely manner, while preserving reasonable citizen participation, HUD is waiving the requirement that the grantee follow its citizen participation plan for this substantial amendment. HUD is shortening the minimum time for citizen comments and requiring the substantial amendment or abbreviated plan to be posted on the grantee's official Web site as the materials are developed, published, and submitted to HUD.

A grantee will be deemed by HUD to have received its NSP grant at the time HUD signs its NSP grant agreement (or amendment thereof, in the case of a state that later receives reallocated grant funds).

Grantees are cautioned that, despite the expedited application and plan process, they are still responsible for ensuring that all citizens have equal access to information about the programs. Among other things, this means that each grantee must ensure that program information is available in the appropriate languages for the geographic area served by the jurisdiction. This will be a particular issue for states that make grants covering regular CDBG entitlement areas (or to entitlement grantees). Because regular State CDBG funds are not used in entitlement areas, State CDBG staffs may not be aware of limited English proficient (LEP) speaking populations in those metropolitan jurisdictions.

HUD will review each grantee submission for completeness and consistency with the requirements of this notice and will disapprove incomplete and inconsistent action plan amendments or abbreviated plans. HUD will allow revision and resubmission of a disapproved amendment or abbreviated plan in accordance with 24 CFR 91.500(d) so long as any such resubmission is received by HUD 45 days or less following the date of first disapproval.

In combination, the notice alternative requirements provide the following expedited steps for NSP grants:

- Proposed action plan amendment or abbreviated plan published via the usual methods and on the Internet for no less than 15 calendar days of public comment;
- Final action plan amendment or abbreviated plan posted on the Internet and submitted to HUD by March 1, 2011 (grant application includes Standard Form 424 (SF-424) and certifications);
- HUD expedites review;
- HUD accepts the plan and prepares a cover letter, grant agreement, and grant conditions;

- Grant agreement signed by HUD and immediately transmitted to the grantee;
- Grantee signs and returns the grant agreements;
- HUD establishes the line of credit and the grantee requests and receives DRGR access (if it does not already have access);
- After completing the environmental review(s) pursuant to 24 CFR part 58 and, as applicable, receiving from HUD or the state an approved Request for Release of Funds and certification, the grantee may draw down funds from the line of credit.

In consideration of the shortened comment period, it is essential that grantees ensure that affected parties have sufficient notice of the opportunity to comment. The action plan substantial amendment or abbreviated plan and citizen participation alternative requirement will permit an expedited grant-making process, but one that still provides for public notice, appraisal, examination, and comment on the activities proposed for the use of NSP3 grant funds.

Note: HUD believes an adequate and acceptable substantial amendment or abbreviated plan should be no longer than 25 pages. A plan should provide sufficient detail for citizens and HUD reviewers. Internet address links can be provided to longer elements that may change, such as detailed rehabilitation standards.

Requirement

1. General. Except as described in this notice, statutory and regulatory provisions governing the CDBG program for states and entitlement communities, as applicable, shall apply to the use of these funds. Except as described in this notice, non-entitlement local government grantees receiving a grant directly from HUD shall follow statutory and regulatory provisions governing the CDBG program for entitlement communities.

2. Contents of an NSP Action Plan substantial amendment or abbreviated plan. The elements in the NSP substantial amendment to the Annual Action Plan or an abbreviated plan required for the CDBG program under part 91 are:

- a. General information about needs, distribution, use of funds, and definitions:
 - i. Each grantee must use the HUD Foreclosure Need Web site as linked to from <http://www.hud.gov/nsp> to submit to HUD the locations of its NSP3 areas of greatest need. On this site, HUD provides estimates of foreclosure need and a foreclosure related needs scores at the Census Tract level. The score rank

need from 1 to 20, with 20 being census tracts with the HUD-estimated greatest need.

- ii. The neighborhood or neighborhoods identified by the NSP3 grantee as being the areas of greatest need must have an individual or average combined index score for the grantee's identified target geography that is not less than the lesser of 17 or the twentieth percentile most needy score in an individual state. For example, if a state's twentieth percentile most needy census tract is 18, the requirement will be a minimum need of 17. If, however, a state's twentieth percentile most needy census tract is 15, the requirement will be a minimum need of 15. HUD will provide the minimum threshold for each state at its Web site <http://www.hud.gov/nsp>. If more than one neighborhood is identified in the Action Plan, HUD will average the neighborhood NSP3 scores, weighting the scores by the estimated number of housing units in each identified neighborhood.

- iii. A narrative describing how the distribution and uses of the grantee's NSP funds will meet the requirements of Section 2301(c)(2) of HERA, as amended by the Recovery Act and the Dodd-Frank Act;

- iv. For the purposes of the NSP3, the narratives will include:

- (A) A definition of "blighted structure" in the context of state or local law;

- (B) A definition of "affordable rents;"

- (C) A description of how the grantee will ensure continued affordability for NSP-assisted housing; and

- (D) A description of housing rehabilitation standards that will apply to NSP-assisted activities.

- b. Information by activity describing how the grantee will use the funds, identifying:

- i. The eligible use of funds under NSP3;

- ii. The eligible CDBG activity or activities;

- iii. The areas of greatest need addressed by the activity or activities;

- vi. The expected benefit to income-qualified persons or households or areas;

- v. Appropriate performance measures for the activity (e.g., units of housing to be acquired, rehabilitated, or demolished for the income levels represented in DRGR, which are currently 50 percent of area median income and below, 51 to 80 percent, and 81 to 120 percent);

- vi. Amount of funds budgeted for the activity;

vii. The name and location of the entity that will carry out the activity; and

viii. The expected start and end dates of the activity.

c. A brief description of the general terms under which assistance will be provided, including:

- i. Range of interest rates (if any);
- ii. Duration or term of assistance;
- iii. Tenure of beneficiaries (*e.g.*, renters or homeowners); and
- vi. If the activity produces housing, how the design of the activity will ensure continued affordability;
- v. How the grantee shall, to the maximum extent feasible, provide for the hiring of employees who reside in the vicinity of NSP3 projects or contract with small businesses that are owned and operated by persons residing in the vicinity of such project, including information on existing local ordinances that address these requirements;
- vi. The procedures used to create preferences for the development of affordable rental housing developed with NSP3 funds; and
- vii. Whether the funds used for the activity are to count toward the requirement to provide benefit to low-income persons (earning 50 percent or less of area median income).

d. The action plan narrative should specifically address how the grantee's program design will address the local housing market conditions.

e. Information on how to contact grantee program administrators, so that citizens and other interested parties know whom to contact for additional information.

3. Continued affordability. Grantees shall ensure, to the maximum extent practicable and for the longest feasible term, that the sale, rental, or redevelopment of abandoned and foreclosed-upon homes and residential properties under this section remain affordable to individuals or families whose incomes do not exceed 120 percent of area median income or, for units originally assisted with funds under the requirements of section 2301(f)(3)(A)(ii) of HERA, as amended, remain affordable to individuals and families whose incomes do not exceed 50 percent of area median income.

a. In its NSP action plan substantial amendment, a grantee will define "affordable rents" and the continued affordability standards and enforcement mechanisms that it will apply for each (or all) of its NSP activities. HUD will consider any grantee adopting the HOME program standards at 24 CFR 92.252(a), (c), (e), and (f), and 92.254, to be in minimal compliance with this standard and expects any other

standards proposed and applied by a grantee to be enforceable and longer in duration. (Note that HERA's continued affordability standard is longer than that required of subrecipients and participating units of general local government under 24 CFR 570.503 and 570.501(b).)

b. The grantee must require each NSP-assisted homebuyer to receive and complete at least 8 hours of homebuyer counseling from a HUD-approved housing counseling agency before obtaining a mortgage loan. If the grantee is unable to meet this requirement for a good cause (*e.g.*, there are no HUD-approved housing counseling agencies within the grantee's jurisdiction, or there are no HUD-approved housing counseling agencies within the grantee's jurisdiction that engage in homebuyer counseling), the grantee may submit a request for an exception to this requirement to the responsible HUD field office, and the HUD field office has the authority to grant an exception for good cause. The grantee must ensure that the homebuyer obtains a mortgage loan from a lender who agrees to comply with the bank regulators' guidance for non-traditional mortgages (*see*, Statement on Subprime Mortgage Lending issued by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Department of the Treasury, and National Credit Union Administration, available at <http://www.fdic.gov/regulations/laws/rules/5000-5160.html>). Grantees must design NSP programs to comply with this requirement and must document compliance in the records, for each homebuyer. Grantees are cautioned against providing or permitting homebuyers to obtain subprime mortgages for whom such mortgages are inappropriate, including homebuyers who qualify for traditional mortgage loans.

4. Citizen participation alternative requirement. HUD is providing an alternative requirement to 42 U.S.C. 5304(a)(2) and (3), to expedite distribution of grant funds and to provide for expedited citizen participation for the NSP substantial amendment. Provisions of 24 CFR 91.105(k), 91.115(i), 570.302 and 570.486, with respect to following the citizen participation plan, are waived to the extent necessary to allow implementation of the requirements below.

a. *Initial Allocation.* To receive its grant allocation, a grantee must submit to HUD for approval an NSP3 application by March 1, 2011. This

submission will include a signed SF-424, signed certifications, and a substantial action plan amendment or abbreviated plan meeting the requirements of paragraph b below. (24 CFR 91.505 is waived to the extent necessary to require submission of the substantial amendment to HUD for approval in accordance with this notice.)

Reallocation. To receive an NSP reallocation, a grantee must submit to HUD for approval an NSP application by the deadline indicated in a reallocation announcement. This submission will include a signed standard Federal form SF-424, signed certifications, and a substantial action plan amendment or abbreviated plan meeting the requirements of paragraph B.3.b below. (24 CFR 91.505 is waived to the extent necessary to require submission of the substantial amendment to HUD for approval in accordance with this notice.)

b. Each grantee must prepare and submit its annual Action Plan amendment or abbreviated plan to HUD in accordance with the consolidated plan procedures under the CDBG program as modified by this notice, or HUD will reallocate the funds allocated for that grantee. HUD is providing alternative requirements to 42 U.S.C. 5304(a)(2) and waiving 24 CFR 91.105(c)(2), 91.105(k), 91.115(c)(2), and 91.115(i) to the extent necessary to allow the grantee to provide no fewer than 15 calendar days for citizen comment (rather than 30 days) for its initial NSP submission and any subsequent substantial NSP action plan amendment, and to require that, at the time of submission to HUD, each grantee post its approved action plan amendment and any subsequent NSP amendments on its official Web site along with a summary of citizen comments received within the 15-day comment period. After HUD processes and approves the plan amendment and both HUD and the grantee have signed the grant agreement, HUD will establish the grantee's line of credit in the amount of funds included in the Action Plan amendment, up to the allocation amount.

5. Joint requests. To expedite the use of funds, HUD is providing an alternative requirement to 42 U.S.C. 5304(i) and is waiving 24 CFR 570.308 to the extent necessary to allow for additional joint programs described below.

a. *Unit of General Local Government Joint Agreements.* Two or more contiguous jurisdictions that are eligible to receive a NSP allocation and are located in the same metropolitan area

may enter into joint agreements. All members to the joint agreement must be eligible to receive NSP1 or NSP3 funds, and one unit of general local government must be designated as the lead entity. The lead entity must execute the NSP grant agreement with HUD. Consistent with 24 CFR 570.308, the lead entity must assume responsibility for administering the NSP grant on behalf of all members, in compliance with applicable program requirements. The lead entity's substantial amendment to the action plan or abbreviated plan will include all participating communities.

b. Joint agreements with a state. Any jurisdiction that is eligible to receive an NSP allocation may enter into a joint agreement with its state. The state shall be the lead entity and must assume responsibility for administering the NSP grant on behalf of the local government, in compliance with applicable program requirements. The substantial amendment to the state's action plan will include any participating unit of general local government.

c. Local jurisdictions receiving reallocation funds may enter into joint agreements in accordance with paragraph B.5.a. or b., regardless of whether the local jurisdiction had a joint agreement for the original NSP allocation.

6. Effect of existing cooperation agreements governing joint programs and urban counties for NSP3 (see NSP1 Notice for parallel language for NSP1 grantees). Any cooperation agreement between a unit of general local government and a county, concerning either a joint program or participation in an urban county under 24 CFR 570.307 or 570.308, and governing CDBG funds appropriated for Federal FY 2010, will be considered to incorporate and apply to NSP3 funding. Any such cooperation agreements will continue to apply to the use of NSP3 funds until the NSP3 funds are expended and the NSP3 grant is closed out. Grantees should note that certain provisions in existing cooperation agreements that govern CDBG funding may be inconsistent with parts of HERA, the Recovery Act, the Dodd-Frank Act or this notice. For instance, set minimum and/or maximum allocation amounts may conflict with priority distributions to areas of greatest need identified in the grantee's action plan substantial amendment. Conforming amendments should be made to existing cooperation agreements, as necessary, to comply with NSP statutory requirements and this notice.

C. Reimbursement for Pre-Award Costs

Background

NSP grantees will need to move forward rapidly to prepare the NSP substantial amendment or abbreviated plan and to undertake other administrative actions, including environmental reviews, as soon as allocations are known. Therefore, HUD is granting permission to states and jurisdictions receiving a direct allocation of NSP funds to incur pre-award costs as if each was a new grantee preparing to receive its first allocation of CDBG funds.

Requirement

HUD is waiving 24 CFR 570.200(h) to the extent necessary to grant permission to jurisdictions receiving a direct NSP allocation under this notice to incur pre-award costs as if each was a new grantee preparing to receive its first allocation of CDBG funds. Similarly, in accordance with OMB Circular A-87, Attachment B, paragraph 31, HUD is allowing states to incur pre-award costs as if each was a new grantee preparing to receive its first allocation of CDBG funds. NSP grantees will be allowed to incur costs necessary to develop the NSP substantial action plan amendment and undertake other administrative actions necessary to receive its first grant, prior to the costs being included in the final plan, provided that the other conditions of 24 CFR 570.200(h) are met. (For units of general local government applying to the state (including entitlements not receiving a direct NSP allocation under this notice), 24 CFR 570.489(b) applies unmodified. Units of general local government receiving direct NSP allocations may incur pre-award costs as would an entitlement community.)

D. Grantee Capacity and Grant Conditions

Background

In the October 6, 2008 Notice, HUD encouraged each local jurisdiction receiving an allocation to carefully consider its administrative capacity to use the funds within the statutory deadline. To support this consideration, HUD will provide each grantee a self-assessment tool that grantees may find useful in better understanding their capacity to undertake and manage NSP activities. This is essentially the same self-assessment tool that is used for NSP Technical Assistance purposes and it will allow HUD to more rapidly identify capacity gaps and technical assistance needs and to provide appropriate technical assistance. Although HUD suggests that every NSP grantee

complete and submit the self-assessment with its substantial amendment or abbreviated plan, HUD will require some grantees to complete and submit such a self-assessment as a special condition of receiving funding.

Requirement

For NSP grantees that HUD determines are high risk in accordance with 24 CFR 85.12(a), HUD will apply additional grant conditions in accordance with 24 CFR 85.12(b).

E. Income Eligibility Requirement Changes

Background

The NSP program includes two low- and moderate-income requirements at HERA section 2301(f)(3)(A) that supersede existing CDBG income qualification requirements. Under the heading "Low and Moderate Income Requirement," HERA states that:

all of the funds appropriated or otherwise made available under this section shall be used with respect to individuals and families whose income does not exceed 120 percent of area median income.

This provision does two main things. First, for the purposes of NSP, it effectively supersedes the overall benefit provisions of the HCD Act and the CDBG regulations, which allow up to 30 percent of a grant to be used for activities that meet a national objective other than low- and moderate-income benefit. Thus, NSP allows the use of *only* the low- and moderate-income benefit national objective. Activities may **not** qualify under NSP using the "prevent or eliminate slums and blight" or "address urgent community development needs" objectives.

Second, this provision also redefines and supersedes the definition of "low- and moderate-income," effectively allowing households whose incomes exceed 80 percent of area median income but do not exceed 120 percent of area median income to qualify as if their incomes did not exceed the published low- and moderate-income levels of the regular CDBG program. To prevent confusion, HUD will refer to this new income group as "middle income," and keep the regular CDBG definitions of "low-income" and "moderate income" in use. Further, HUD will characterize aggregated households whose incomes do not exceed 120 percent of median income as "low-, moderate-, and middle-income households," abbreviated as LMMH. For the purposes of NSP only, an activity may meet the HERA low- and moderate-income national objective if the assisted activity:

- Provides or improves permanent residential structures that will be occupied by a household whose income is at or below 120 percent of area median income (abbreviated as LMMH);
- Serves an area in which at least 51 percent of the residents have incomes at or below 120 percent of area median income (LMMA); or
- Serves a limited clientele whose incomes are at or below 120 percent of area median income (LMMC).

HUD will use the parenthetical terms above to refer to NSP national objectives in program implementation, to avoid confusion with the regular HCD Act definitions.

Land banks are not allowed in the regular CDBG program because of the very high risk that the delay between acquiring property and meeting a national objective can be excessively long, attenuating the intended CDBG program benefits by delaying benefit far beyond the annual or even the 5-year consolidated plan cycles. In the regular CDBG program (and in NSP other than in an eligible land-bank use), a property acquisition activity is dependent on the subsequent re-use of the property meeting a national objective in order to demonstrate program compliance. Given this, the HERA direction that assistance to land banks is an eligible use of NSP funds requires an alternative requirement and policy clarification.

For grantees choosing to assist land banks or demolition of structures with NSP funds, the change to the income qualification level for low-, moderate- and middle-income areas will likely include most of the neighborhoods where property stabilization is required. If an assisted land bank is not merely acquiring properties, but is also working in an area in which other activities are being carried out that are intended to arrest neighborhood decline, such as maintenance, demolition, and facilitating redevelopment of the properties, HUD will, for NSP-assisted activities only, accept that the acquisition and management activities of the land bank may provide sufficient benefit to an area generally (as described in 24 CFR 570.208(a)(1) and 570.483(b)(1)) to meet a national objective (LMMA) prior to final disposition of the banked property. HUD notes that the grantee must determine the actual service area benefiting from a land bank's activities, in accordance with the regulations.

However, HUD does not believe the benefits of just holding property are sufficient to stabilize most neighborhoods or that this is the best use of limited NSP funds absent a re-use plan. Therefore, HUD requires that a

land bank may not hold a property for more than 10 years without obligating the property for a specific, eligible redevelopment of that property in accordance with NSP requirements.

Note that if a state provides funds to an entitlement community, the entitlement community must apply the area median income levels applicable to its regular CDBG program geography and not the "balance of state" levels.

Other than the change in the applicable low- and moderate-income qualification level from 80 percent to 120 percent and this notice's change to the calculation at 570.483(b)(3), the area benefit, housing, and limited clientele benefit requirements at 24 CFR 570.208(a) and 570.483(b) remain unchanged, as does the required documentation.

The other NSP low- and moderate-income related provision, as modified by the Dodd-Frank Act, states that:

"not less than 25 percent of the funds appropriated or otherwise made available under this section shall be used to house individuals or families whose incomes do not exceed 50 percent of area median income."

The Dodd-Frank Act struck language in HERA that specified that funds meeting the 25 percent requirement must be used specifically for the purchase and redevelopment of abandoned and foreclosed homes or residential properties. This means that, as of the effective date of the Dodd-Frank Act, any NSP eligible activity used to house individuals or families at or below 50 percent area medium income may be used to satisfy this requirement (*i.e.*, vacant properties that are not abandoned or foreclosed may be used to meet the requirement as well as eligible commercial properties that are reused to house individuals and families at or below 50% AMI). However, NSP1 and NSP2 funds already obligated or expended prior July 21, 2010, do not retroactively satisfy this requirement.

HUD advises grantees to take note of this threshold as they design NSP activities. This provision does not have a parallel in the regular CDBG program. Grantees must document that an amount equal to at least 25 percent of a grantee's NSP grant (initial allocation plus any program income) has been budgeted in the initial approved action plan substantial amendment or abbreviated plan for activities that will provide housing for income-qualified individuals or families. Prior to and at grant closeout, HUD will review grantees for compliance with this provision by determining whether at least 25 percent of grant funds have

been expended for housing for individual households whose incomes do not exceed 50 percent of area median income.

HUD is providing a waiver and alternative requirement to allow grantees to determine low- and moderate income benefit on a unit basis to allow greater support of mixed income housing than the structure basis required by 24 CFR 570.483(b)(3). (Under the cited regulation, the general rule is that at least 51 percent of the residents of an assisted structure must be income eligible.) Under the unit approach, one or more of the units in a structure must house income-eligible families, but the remainder of the units may be market rate, so long as the proportion of assistance provided compared to the overall project budget is no more than the proportion of units that will be occupied by income-eligible households compared to the number of units in the overall project. Under the unit approach, the number of income-eligible units is proportional to the amount of assistance provided. Note that this approach may only be used if the units are generally comparable in size and finishes. Based on HUD experience, this approach is generally more compatible with large-scale development of mixed-income housing than the structure approach under which a dollar of CDBG assistance to a structure means that 51 percent of the units must meet income requirements.

For the purposes of NSP, adopting the unit basis continues to benefit individuals and families whose income does not exceed 120 percent of area median income by limiting the proportion of the funding to the proportion of units that are being assisted with NSP funds. This approach also helps to avoid displacing existing over-income tenants in a building being treated with NSP. Finally, it promotes the type of mixed-income developments that experience shows to be more successful both economically and socially. Therefore, the waiver and alternative requirements allow the grantee a choice. The grantee may measure benefit within a housing development project (1) according to the existing CDBG requirements, (2) according to the HOME program requirements at 24 CFR 92.205(d) or (3) according to the modified CDBG alternative requirements specified in this notice, which extend the CDBG exception noted above. The grantee must select and use just one method for each project.

Requirements

1. Overall benefit supersession and alternative requirement. The requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484 (for states), and 24 CFR 570.200(a)(3) that 70 percent of funds are for activities that benefit low- and moderate-income persons are superseded and replaced by section 2301(f)(3)(A) of HERA. One hundred percent of NSP funds must be used to benefit individuals and households whose income does not exceed 120 percent of area median income. NSP shall refer to such households as "low-, moderate-, and middle-income."

2. National objectives supersession and alternative requirements. The requirements at 42 U.S.C. 5301(c) are superseded and 24 CFR 570.208(a) and 570.483 are waived to the extent necessary to allow the following alternative requirements:

a. for purposes of NSP only, the term "low- and moderate-income person" as it appears throughout the CDBG regulations at 24 CFR part 570 shall be defined as a member of a low-, moderate-, and middle-income household, and the term "low- and moderate-income household" as it appears throughout the CDBG regulations shall be defined as a household having an income equal to or less than 120 percent of area median income, measured as 2.4 times the current Section 8 income limit for households below 50 percent of median income, adjusted for family size. A state choosing to carry out an activity directly must apply the requirements of 24 CFR 570.208(a) to determine whether the activity has met the low-, moderate-, and middle-income (LMMI) national objective and must maintain the documentation required at 24 CFR 570.506 to demonstrate compliance to HUD.

b. The national objectives related to prevention and elimination of slums and blight and addressing urgent community development needs (24 CFR 570.208(b) and (c) and 570.483(c) and (d)) are not applicable to NSP-assisted activities.

c. Each grantee whose plan includes assisting rental housing shall develop and make public its definition of affordable rents for NSP-assisted rental projects.

d. An NSP-assisted property may not be held in a land bank for more than 10 years without obligating the property for a specific, eligible redevelopment of that property in accordance with NSP requirements.

e. Not less than 25 percent of any NSP grant shall be used to house individuals or families whose incomes do not exceed 50 percent of area median income.

f. HUD will consider assistance for a multi-unit housing project involving new construction, acquisition, reconstruction, or rehabilitation to benefit LMMI households in the following circumstances:

(i)(A) The NSP assistance defrays the development costs of a housing project providing eligible permanent residential units that, upon completion, will be occupied by income-qualified households; and

(B) if the project is rental, the units occupied by income-qualified households will be leased at affordable rents. The grantee or unit of general local government shall adopt and make public its standards for determining "affordable rents" for this purpose; and

(C) The proportion of the total cost of developing the project to be borne by NSP assistance is no greater than the proportion of units in the project that will be occupied by income-qualified households; or

(ii) When NSP assistance defray the development costs of eligible permanent residential units, such assistance shall be considered to benefit LMMI persons if the grantee follows the provisions of 24 CFR 92.205(d); or

(iii) The requirements of 24 CFR 570.208(a)(3) or 570.483(b)(3) are met, as applicable.

(iv) The grantee must select and use just one method for each project.

(v) The term "project" will be defined as in the HOME Program at 24 CFR 92.2.

(vi) If the grantee applies option (i) or (ii) above to a housing project, 24 CFR 570.208(a)(3) or 570.483(b)(3), as applicable, is waived for that project.

F. State Distribution to Entitlement Communities and Indian Tribes

Background

This notice includes an alternative requirement to the HCD Act and a regulatory waiver allowing distribution of funds by a state to CDBG regular entitlement communities and Tribes. This is consistent with the provision of HERA that specifically sets distribution priorities for areas with the greatest need, including "metropolitan areas, metropolitan cities, urban areas, rural areas, low- and moderate-income areas * * *." Therefore, states receiving allocations under this notice may distribute funds to or within any jurisdiction within the state that is among those with the greatest need, even if the jurisdiction is among those

receiving a direct formula allocation of funds from HUD under the regular CDBG program or this notice.

Requirement

Alternative requirement for distribution to CDBG metropolitan cities, urban counties, and Tribes. In accordance with the direction of HERA that grantees distribute funds to the areas of greatest need, HUD is providing an alternative requirement to 42 U.S.C. 5302(a)(7) (definition of "nonentitlement area") and waiving provisions of 24 CFR part 570, including 24 CFR 570.480(a), that would prohibit states electing to receive CDBG funds from distributing such funds to units of general local government in entitlement communities or to Tribes. The appropriations law supersedes the statutory distribution prohibition at 42 U.S.C. 5306(d)(1) and (2)(A). Alternatively, the state is required to distribute funds without regard to a local government status under any other CDBG program and must use funds in entitlement jurisdictions if they are identified as areas of greatest need, regardless of whether the entitlement receives its own NSP allocation.

G. State's Direct Action

Background

In the State CDBG Program, states receiving CDBG funds may not directly use the funds for activities, but must distribute them to units of general local government, which then use the funds for program activities. HUD also notes the language of HERA section 2301(c) that says, in part, that:

"Any State * * * that receives amounts pursuant to this section shall * * * use such amounts to purchase and redevelop * * *."

This clearly speaks to the states using funds directly for projects and supersedes the HCD Act direction for states to only *distribute* funds to nonentitlement areas. Direct use of funds by a state may also result in more expeditious use of NSP funds. Therefore, a state receiving NSP funds may carry out NSP activities directly for some or all of its assisted grant activities, just as CDBG entitlement communities do under 24 CFR 570.200(f), including, but not limited to, carrying out activities using its own employees, procuring contractors, private developers, and providing loans and grants through nonprofit subrecipients (including local governments and other public nonprofits such as regional or local planning or development authorities and public housing authorities).

For those activities a state chooses to carry out directly, HUD strongly advises the state to adopt the recordkeeping required for an entitlement community at 24 CFR 570.506 and the subrecipient agreement provisions at 24 CFR 570.503. Also, in such cases, as an alternative requirement to 42 U.S.C. 5304(i), the state may retain and re-use program income as if it were an entitlement community.

HUD is granting regulatory waivers of State CDBG regulations to conform to the applicable management, real property change of use, and recordkeeping rules when a state chooses to carry out activities as if it were an entitlement community.

Requirements

1. Responsibility for state review and handling of noncompliance. This change conforms NSP requirements with the waiver allowing the state to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies: The state shall make reviews and audits, including on-site reviews of any subrecipients, designated public agencies, and units of general local government as may be necessary or appropriate to meet the requirements of 42 U.S.C. 5304(e)(2), as amended, as modified by this notice. In the case of noncompliance with these requirements, the state shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The state shall establish remedies for noncompliance by any designated public agencies or units of general local governments and for its subrecipients.

2. Change of use of real property for state grantees acting directly. This waiver conforms the change of use of real property rule to the waiver allowing a state to carry out activities directly. For purposes of this program, in 24 CFR 570.489(j), (j)(1), and the last sentence of (j)(2), "unit of general local government" shall be read as "unit of general local government or state."

3. Recordkeeping for a state grantee acting directly. Recognizing that the state may carry out activities directly, 24 CFR 570.490(b) is waived in such a case and the following alternative provision shall apply:

State Records. The state shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the state's administration of NSP funds under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other

Federal requirements, the content of records maintained by the state shall be sufficient to: (1) Enable HUD to make the applicable determinations described at 24 CFR 570.493; (2) make compliance determinations for activities carried out directly by the state; and (3) show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

4. State compliance with certifications for state grantees acting directly. This is a conforming change related to the waiver to allow a state to act directly. Because a state grantee under this appropriation may carry out activities directly, HUD is applying the regulations at 24 CFR 570.480(c) with respect to the basis for HUD determining whether the state has failed to carry out its certifications, so that such basis shall be that the state has failed to carry out its certifications in compliance with applicable program requirements.

5. Clarifying note on the process for environmental release of funds when a state carries out activities directly. Usually, a state distributes CDBG funds to units of local government and takes on HUD's role in receiving environmental certifications from the grantees and approving releases of funds. For NSP, HUD allows a state grantee to also carry out activities directly instead of distributing them to other governments. According to the environmental regulations at 24 CFR 58.4, when a state carries out activities directly, the state must submit the certification and request for release of funds to HUD for approval.

H. Eligibility and Allowable Costs

Background

Most of the activities eligible under NSP are correlated with CDBG-eligible activities under 42 U.S.C. 5305(a). This correlation reduces implementation risks, because it ensures that the NSP grants are administered largely in accordance with long-established CDBG rules and controls. The table in the requirements paragraph below shows the eligible uses under NSP and the eligible activities from the regulations for the regular CDBG entitlement program that HUD has determined best correspond to those uses. If a grantee creates a program design that includes a CDBG-eligible activity that is not

shown in the table to support an NSP-eligible use, the Department is providing an alternative requirement to 42 U.S.C. 5305(a) that HUD may allow a grantee an additional eligible-activity category if HUD finds the activity to be in compliance with NSP statutory requirements. As under the regular CDBG program, grantees may fund costs, such as reasonable developer's fees, related to NSP-assisted housing rehabilitation or construction activities. Only NSP1 funds may be used to redevelop acquired property for nonresidential uses, such as public parks, commercial uses, or mixed residential and commercial uses. Redevelopment activities using NSP2 and NSP3 funds must be for housing.

The annual entitlement CDBG program allows up to 20 percent of any grant amount plus program income may be used for general administration and planning costs. The State CDBG Program is also subject to the 20 percent limitation, but within that cap up to 3 percent may be used by the state for state administrative costs and technical assistance to potential local government program grantees, with the remainder available to be granted to local government grantees for their administrative costs. Because some of the costs usually allocated under these caps are not applicable to NSP grants (for example, the costs of completing the entire consolidated plan process), these amounts seem excessive to HUD in the context of the NSP program. On the other hand, HUD wants to encourage and support expeditious, appropriate, and compliant use of grant funds, and to prevent fraud, waste, and abuse of funds. Therefore, HUD is providing an alternative requirement that an amount of up to 10 percent of an NSP grant provided to a jurisdiction and of up to 10 percent of program income earned may be used for general administration and planning activities as those are defined at 24 CFR 570.205 and 206. For all grantees, including states, the 10 percent limitation applies to the grant as a whole.

The regulatory and statutory requirements for state match for program administration at 24 CFR 570.489(a)(i) are superseded by the statutory direction at section 2301(e)(2) of HERA that no matching funds shall be required for a state or unit of general local government to receive a grant.

Requirements

1. Use of grant funds must constitute an eligible use under HERA.

2. In addition to being an eligible NSP use of funds, each activity funded under NSP must also be CDBG-eligible under

42 U.S.C. 5305(a) and meet a CDBG national objective.

3.a. Certain CDBG-eligible activities correlate to specific NSP-eligible uses and vice versa. 42 U.S.C. 5305(a) and 24 CFR 570.201–207 and 570.482(a) through (d) are superseded to the extent

necessary to allow the eligible uses described under section 2301(c)(4) of HERA in accordance with this paragraph (including the table and subparagraphs below) or with permission granted, in writing, by HUD

upon a written request by the grantee that demonstrates that the proposed activity constitutes an eligible use under NSP. All NSP grantees, including states, will use the NSP categories and CDBG entitlement regulations listed below.

NSP-eligible uses	Correlated eligible activities from the CDBG entitlement regulations
(A) Establish financing mechanisms for purchase and redevelopment of <i>foreclosed upon homes and residential properties</i> , including such mechanisms as soft-second, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers.	<ul style="list-style-type: none"> • As part of an activity delivery cost for an eligible activity as defined in 24 CFR 570.206. • Also, the eligible activities listed below to the extent financing mechanisms are used to carry them out. • 24 CFR 570.201(a) Acquisition (b) Disposition, (i) Relocation, and (n) Direct homeownership assistance (as modified below); • 24 CFR 570.202 eligible rehabilitation and preservation activities for homes and other residential properties. • HUD notes that any of the activities listed above may include required homebuyer counseling as an activity delivery cost.
(B) Purchase and rehabilitate <i>homes and residential properties that have been abandoned or foreclosed upon</i> , in order to sell, rent, or redevelop such homes and properties.	<ul style="list-style-type: none"> • 24 CFR 570.201(a) Acquisition and (b) Disposition. • HUD notes that any of the activities listed above may include required homebuyer counseling as an activity delivery cost.
(C) Establish and operate land banks for <i>homes and residential properties that have been foreclosed upon</i> .	<ul style="list-style-type: none"> • 24 CFR 570.201(d) Clearance for blighted structures only.
(D) Demolish <i>blighted structures</i>	<ul style="list-style-type: none"> • 24 CFR 570.201(a) Acquisition, (b) Disposition, (c) Public facilities and improvements, (e) Public services for housing counseling, but only to the extent that counseling beneficiaries are limited to prospective purchasers or tenants of the redeveloped properties, (i) Relocation, and (n) Direct homeownership assistance (as modified below).
(E) Redevelop <i>demolished or vacant properties</i> as housing.*	<ul style="list-style-type: none"> • 24 CFR 570.202 Eligible rehabilitation and preservation activities for demolished or vacant properties. • 24 CFR 570.204 Community based development organizations. • HUD notes that any of the activities listed above may include required homebuyer counseling as an activity delivery cost.

* NSP1 funds used under eligible use (E) may be used for nonresidential purposes, while NSP2 and NSP3 funds must be used for housing.

b. HUD will not consider requests to allow foreclosure prevention activities, or to allow demolition of structures that are not blighted. Neither will it allow purchase of residential properties and homes that have not been abandoned or foreclosed upon, except under paragraph (E) of the eligible use chart above. HUD does not have the authority to permit uses or activities not authorized by HERA.

c. New construction of housing is eligible as part the redevelopment of demolished or vacant properties as provided in paragraph (E) of the eligible use chart above.

d. 24 CFR 570.201(n) is waived and an alternative requirement provided for 42 U.S.C. 5305(a) to the extent necessary to allow provision of NSP-assisted homeownership assistance to persons whose income does not exceed 120 percent of median income.

e. No NSP2 or NSP3 funds may be used to demolish any public housing (as defined by Section 3 of the U.S. Housing Act of 1937 (42 U.S.C. 1437a)).

f. For NSP2 and NSP3, a grantee may not use more than 10 percent of its grant for demolition activities under HERA sections 2301(c)(4)(C) and (D), unless the Secretary determines that such use represents an appropriate response to

local market conditions. NSP2 and NSP3 grantees seeking to use more than 10 percent of their grant amounts on demolition activities must request a waiver from HUD.

4. Alternative requirement for the limitation on planning and administrative costs. 24 CFR 570.200(g) and 570.489(a)(3) are waived to the extent necessary to allow each grantee under this notice to expend no more than 10 percent of its grant amount, plus 10 percent of the amount of program income received by the grantee, for activities eligible under 24 CFR 570.205 or 206. The requirements at 24 CFR 570.489 are waived to the extent that they require a state match for general administrative costs. (States may use NSP funds under this 10 percent limitation to provide technical assistance to local governments and nonprofit program participants.)

I. Rehabilitation Standards

Background

HERA provides that any NSP-assisted rehabilitation of a foreclosed-upon home or residential property shall be to the extent necessary to comply with applicable laws, codes, and other requirements relating to housing safety,

quality, and habitability, in order to sell, rent, or redevelop such homes and properties. HUD is also imposing this requirement for NSP3-assisted new construction. This imposes a requirement that does not exist in the CDBG program. This means that each grantee must describe or reference in its NSP action plan amendment what rehabilitation standards it will apply for NSP-assisted rehabilitation. As a reminder, grantees are subject to Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act, including their respective provisions related to physical accessibility standards for persons with disabilities. See 24 CFR part 8; 24 CFR 100.205. See also 24 CFR 570.487 and 24 CFR 570.602. HUD will monitor to ensure the standards are implemented.

HERA defines rehabilitation to include improvements to increase the energy efficiency or conservation of such homes and properties or to provide a renewable energy source or sources for such homes and properties. Such improvements are also eligible under the regular CDBG program. HUD strongly encourages grantees to use NSP funds not only to stabilize neighborhoods in the short-term, but to strategically incorporate modern, green

building and energy-efficiency improvements in all NSP activities to provide for long-term affordability and increased sustainability and attractiveness of housing and neighborhoods. At minimum, NSP3 grantees must have the rehabilitation standards required below. See Appendix C for examples of green and energy-efficiency actions. Additional resources related to sustainable and energy-efficient construction are available on the NSP Resource Exchange Web site (<http://www.hud.gov/nspta>).

Requirement. For NSP3, HUD is requiring that all gut rehabilitation (*i.e.*, general replacement of the interior of a building that may or may not include changes to structural elements such as flooring systems, columns or load bearing interior or exterior walls) or new construction of residential buildings up to three stories must be designed to meet the standard for Energy Star Qualified New Homes. All gut rehabilitation or new construction of mid- or high-rise multifamily housing must be designed to meet American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1–2004, Appendix G plus 20 percent (which is the Energy Star standard for multifamily buildings piloted by the Environmental Protection Agency and the Department of Energy). Other rehabilitation must meet these standards to the extent applicable to the rehabilitation work undertaken, *e.g.*, replace older obsolete products and appliances (such as windows, doors, lighting, hot water heaters, furnaces, boilers, air conditioning units, refrigerators, clothes washers and dishwashers) with Energy Star-labeled products. Water efficient toilets, showers, and faucets, such as those with the WaterSense label, must be installed. Where relevant, the housing should be improved to mitigate the impact of disasters (*e.g.*, earthquake, hurricane, flooding, fires).

J. Sale of Homes

Background

Section 2301(d)(3) of HERA directs that, if an abandoned or foreclosed-upon home or residential property is purchased, redeveloped, or otherwise sold to an individual as a primary residence, then such sale shall be in an amount equal to or less than the cost to acquire and redevelop or rehabilitate such home or property up to a decent, safe, and habitable condition. (Sales and closing costs are eligible NSP redevelopment or rehabilitation costs). Note that the maximum sales price for a property is determined by aggregating

all costs of acquisition, rehabilitation, and redevelopment (including related activity delivery costs, which generally may include, among other items, costs related to the sale of the property).

Requirements

1. In its records, each grantee must maintain sufficient documentation about the purchase and sale amounts of each property and the sources and uses of funds for each activity so that HUD can determine whether the grantee is in compliance with this requirement. A grantee will be expected to provide this documentation individually for each activity.

2. In determining the sales price limitation, HUD will not consider the costs of boarding up, lawn mowing, simply maintaining the property in a static condition, or, in the absence of NSP-assisted rehabilitation or redevelopment of the property, the costs of completing a sales transaction or other disposition to be redevelopment or rehabilitation costs. These costs may not be included by the grantee in the determination of the sales price for an NSP-assisted property.

3. For reporting purposes only, for a housing program involving multiple single-family structures under the management of a single entity, HUD will permit reporting the aggregation of activity delivery costs across the total portfolio of projects until completion of the program or closeout of the grant with HUD, whichever comes earlier.

K. Acquisition and Relocation

Background

Acquisition of Foreclosed-Up On Properties. HUD notes that section 2301(d)(1) of HERA conflicts with section 301(3) of the URA (42 U.S.C. 4651) and related regulatory requirements at 49 CFR 24.102(d). As discussed further, section 2301(d)(1) of HERA requires that any acquisition of a foreclosed-upon home or residential property under NSP be at a discount from the current market-appraised value of the home or property and that such discount shall ensure that purchasers are paying below-market value for the home or property. Section 301(3) of the URA, as implemented at 49 CFR 24.102(d), provides that an offer of just compensation shall not be less than the agency's approved appraisal of the fair market value of such property. These URA acquisition policies apply to any acquisition of real property for a federally funded project, except for acquisitions described in 49 CFR 24.101(b)(1) through (5) (commonly referred to as "voluntary acquisitions").

As the more recent and specific statutory provision, section 2301(d)(1) of HERA prevails over section 301 of the URA for purposes of NSP-assisted acquisitions of foreclosed-upon homes or residential properties.

NSP Appraisal Requirements. Section 2301(d)(1) of HERA requires an appraisal for purposes of determining the statutory purchase discount. This appraisal requirement applies to any NSP-assisted acquisition of a foreclosed-upon home or residential property (including voluntary acquisitions). As noted above, section 301 of the URA does not apply to voluntary acquisitions. While the URA and its regulations do not require appraisals for such acquisitions, the URA acquisition policies do not prohibit acquiring agencies from obtaining appraisals. Appendix A, 49 CFR 24.101(b)(1)(iv) and (2)(ii), acknowledges that acquiring agencies may still obtain an appraisal to support their determination of fair market value.

One-for-One Replacement. HUD is providing an alternative requirement to the one-for-one replacement requirements set forth in 42 U.S.C. 5304(d)(2), as implemented at 24 CFR 42.375. The Department anticipates a large number of requests from grantees for whom the requirements will be onerous given the pressing rush to implement NSP, and several of the major housing markets affected by the foreclosure crisis have a surplus of abandoned and foreclosed-upon residential properties. The additional workload of reviewing requests under 42 U.S.C. 5304(d)(3) and 24 CFR 42.375(d) could cause a substantial backlog at HUD and delay NSP program operations. Therefore, the alternative requirement is that an NSP grantee is not required to meet the requirements of 42 U.S.C. 5304(d), as implemented at 24 CFR 42.375, to provide one-for-one replacement of low- and moderate-income dwelling units demolished or converted in connection with activities assisted with NSP funds. Alternatively, each grantee must submit the information described below relating to its demolition and conversion activities in its action plan substantial amendment or abbreviated plan. The grantee will report to HUD and citizens (via prominent posting of the DRGR reports on the grantee's official Internet site) on progress related to these measures until the closeout of its grant with HUD. HUD reminds grantees to be aware of the requirement to have and follow a residential antidisplacement and relocation plan for the CDBG and HOME programs. This requirement is not waived for those programs and

continues to apply to activities assisted with regular CDBG and HOME funds.

Relocation Assistance. HUD is not waiving or specifying alternative requirements to the URA's relocation provisions. Those requirements that do not conflict with HERA continue to apply. HUD is *not* specifying alternative requirements to the relocation assistance provisions at 42 U.S.C. 5304(d). Guidance on meeting these requirements is available on the HUD Web site and through local HUD field offices. HUD urges grantees to consider URA requirements in designing their programs and to remember that there are URA obligations related to voluntary and involuntary property acquisition activities, even for vacant and abandoned property.

Tenant Protections. The Recovery Act included tenant protections applicable to NSP grants. First, the Recovery Act included a provision applicable to any foreclosed upon dwelling or residential real property that was acquired by the initial successor in interest pursuant to the foreclosure after February 17, 2009 and was occupied by a *bona fide* tenant at the time of foreclosure. The use of NSP funds for acquisition of such property is subject to a determination by the grantee that the initial successor in interest complied with these requirements. Second, NSP grantees may not refuse to lease a dwelling unit in housing with such loan or grant to a participant under section 8 of the United States Housing Act of 1937 (42 U.S.C 1437f) because of the status of the prospective tenant as such a participant.

Requirements

One for One Replacement Requirements.

1. The one-for-one replacement requirements at 24 CFR 570.488, 570.606(c), and 42.375 are waived for low- and moderate-income dwelling units demolished or converted in connection with an activity assisted with NSP funds. As an alternative requirement to 42 U.S.C. 5304(d)(2)(A)(i) and (ii), each grantee planning to demolish or convert any low- and moderate-income dwelling units as a result of NSP-assisted activities must identify all of the following information in its NSP substantial amendment or abbreviated plan:

(a) The number of low- and moderate-income dwelling units reasonably expected to be demolished or converted as a direct result of NSP-assisted activities;

(b) The number of NSP affordable housing units (made available to low-, moderate-, and middle-income

households) reasonably expected to be produced, by activity and income level as provided for in DRGR, by each NSP activity providing such housing (including a proposed time schedule for commencement and completion); and

(c) The number of dwelling units reasonably expected to be made available for households whose income does not exceed 50 percent of area median income.

The grantee must also report on actual performance for demolitions and production, as required elsewhere in this notice.

Tenant Protections.

2. The following requirements apply to any foreclosed upon dwelling or residential real property that was acquired by the initial successor in interest pursuant to the foreclosure after February 17, 2009 and was occupied by a *bona fide* tenant at the time of foreclosure. The use of NSP funds for acquisition of such property is subject to a determination by the grantee that the initial successor in interest complied with these requirements.

a. The initial successor in interest in a foreclosed upon dwelling or residential real property shall provide a notice to vacate to any *bona fide* tenant at least 90 days before the effective date of such notice. The initial successor in interest shall assume such interest subject to the rights of any *bona fide* tenant, as of the date of such notice of foreclosure: (i) Under any *bona fide* lease entered into before the date of notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90-day notice under this paragraph; or (ii) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90-day notice under this paragraph, except that nothing in this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

b.i. In the case of any qualified foreclosed housing in which a recipient of assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C 1437f) (the "Section 8 Program") resides at the time of foreclosure, the initial successor in interest shall be subject to the lease and to the housing assistance payments contract for the occupied unit.

ii. Vacating the property prior to sale shall not constitute good cause for termination of the tenancy unless the property is unmarketable while occupied or unless the owner or subsequent purchaser desires the unit for personal or family use.

iii. If a public housing agency is unable to make payments under the contract to the immediate successor in interest after foreclosure, due to (A) an action or inaction by the successor in interest, including the rejection of payments or the failure of the successor to maintain the unit in compliance with the Section 8 Program or (B) an inability to identify the successor, the agency may use funds that would have been used to pay the rental amount on behalf of the family—(1) to pay for utilities that are the responsibility of the owner under the lease or applicable law, after taking reasonable steps to notify the owner that it intends to make payments to a utility provider in lieu of payments to the owner, except prior notification shall not be required in any case in which the unit will be or has been rendered uninhabitable due to the termination or threat of termination of service, in which case the public housing agency shall notify the owner within a reasonable time after making such payment; or (2) for the family's reasonable moving costs, including security deposit costs.

c. For purposes of this section, a lease or tenancy shall be considered *bona fide* only if: (i) the mortgagor under the contract is not the tenant; (ii) the lease or tenancy was the result of an arm's length transaction; and (iii) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property. See Section II.A for the definition of date of notice of foreclosure.

d. The grantee shall maintain documentation of its efforts to ensure that the initial successor in interest in a foreclosed upon dwelling or residential real property has complied with the requirements under section K.2.a. and K.2.b. If the grantee determines that the initial successor in interest in such property failed to comply with such requirements, it may not use NSP funds to finance the acquisition of such property unless it assumes the obligations of the initial successor in interest specified in section K.2.a. and K.2.b.

e. Grantees must provide the relocation assistance required pursuant to 24 CFR 570.606 to tenants displaced as a result of an NSP-assisted activity and maintain records in sufficient detail to demonstrate compliance with the provisions of that section. For purposes

of clarification, grantees need to be aware that the NSP tenant protection requirements under the Recovery Act are separate and apart from the obligations imposed on grantees by the URA. The URA applies to any person displaced as a direct result of acquisition, rehabilitation, and/or demolition of real property for a federally-assisted project. Eligibility determinations under the URA and the required notices and relocation assistance requirements are separate and distinct from the NSP tenant protections in the Recovery Act. Grantees cannot assume that a person entitled to the NSP tenant protections under the Recovery Act is also eligible for assistance under the URA (or vice versa). Any tenant lawfully occupying the property evicted by the owner/mortgagor in order to facilitate an acquisition under the NSP program (including short sales) is most likely eligible for URA relocation assistance and payments as a displaced person.

3. The grantee of any grant or loan made from NSP funds may not refuse to lease a dwelling unit in housing with such loan or grant to a participant under the Section 8 Program because of the status of the prospective tenant as such a participant.

4. This section shall not preempt any Federal, State or local law that provides more protections for tenants.

L. Note on Eminent Domain

Although section 2303 of HERA appears to allow some use of eminent domain for public purposes, HUD cautions grantees that HERA section 2301(d)(1) may effectively ensure that all NSP-assisted property acquisitions must be voluntary acquisitions as the term is defined by the URA and its implementing regulations. Section 2301(d)(1) of HERA directs that any purchase of a foreclosed-upon home or residential property under NSP be at a discount from the current market appraised value of the home or residential property and that such discount shall ensure that purchasers are paying below-market value for the home or property. However, the Fifth Amendment to the U.S. Constitution provides that private property shall not be taken for public use without just compensation. The Supreme Court has ruled that a jurisdiction must pay fair market value for the purchase of property through eminent domain. A grantee contemplating using NSP funds to assist an acquisition involving an eminent domain action is advised to consult appropriate legal counsel before taking action.

M. Timeliness of Use and Expenditure of NSP Funds

Background

One of the most critical NSP1 provisions is the HERA requirement at section 2301(c)(1) that any grantee receiving a grant:

“ * * shall, not later than 18 months after the receipt of such amounts, use such amounts to purchase and redevelop abandoned and foreclosed homes and residential properties.”

HUD has defined the term “use” in this notice to include obligation of funds.

A further complication is that HERA clearly expects grantees to earn program income under this grant program. As provided under 24 CFR 85.21, entitlements grantees and subrecipients shall disburse program income before requesting additional cash withdrawals from the U.S. Treasury. States are governed similarly by 24 CFR 570.489(e)(3) and 31 CFR part 205. This requirement is reflected in the regulations governing use of program income by states and units of general local government under the CDBG program. This means that a grantee that successfully and quickly deploys its program and generates program income may obligate, draw down, and expend an amount equal to its NSP1 allocation amount, and still have funds remaining in its line of credit, possibly subject to recapture at the 18-month deadline.

On consideration, the Department chose to implement the NSP1 use test based on whether the state or unit of general local government has expended or obligated the NSP1 grant funds and program income in an aggregate amount at least equal to the NSP1 allocation. HUD also imposed a deadline for expending NSP1 grant funds because the intent of these grants clearly is to quickly address an emergency situation in areas of the greatest need.

NSP2 and NSP3 grants follow the statutory expenditure deadlines described under the Recovery Act, which provides that grantees:

“shall expend at least 50 percent of allocated funds within 2 years of the date funds become available to the [recipient] for obligation, and 100 percent of such funds within 3 years of such date.”

NSP2 and NSP3 expenditure timelines are tighter than under NSP1. In the NSP2 NOFA, HUD required NSP2 grantees to expend their entire grant, including program income, within the statutory timeframes. Upon reflection, HUD has determined that the better interpretation would be similar to the NSP1 requirement that requires the

expenditure of grant funds and program income in an aggregate amount at least equal to the NSP2 or NSP3 allocation. HUD is therefore including a revision to the NSP2 NOFA program requirements in this Notice. If any NSP grantee fails to meet the requirement to expend an amount equal to its grant within the relevant timelines, HUD, on the first business day after that deadline, will notify the grantee and restrict the amount of unused funds in the grantee's line of credit. HUD will allow the grantee 30 days to submit information to HUD regarding any additional expenditure of funds not already recorded in DRGR. Then HUD may proceed to recapture the unused funds or provide for other corrective action(s) or sanction.

Requirements

1. Timely use of NSP1 funds. At the end of the statutory 18-month use period, which begins when the NSP grantee receives its funds from HUD, the state or unit of general local government NSP grantee's accounting records and DRGR information must reflect outlays (expenditures) and unliquidated obligations for approved activities that, in the aggregate, are at least equal to the NSP allocation. (The DRGR system collects information on expenditures and obligations.) Grantees receiving a reallocation of NSP1 funds must also comply with the 18-month use requirement.

2. Timely expenditure of NSP1 funds. The timely distribution or expenditure requirements of sections 24 CFR 570.494 and 570.902 are waived to the extent necessary to allow the following alternative requirement: All NSP1 grantees must expend on eligible NSP activities an amount equal to or greater than the initial allocation of NSP1 funds within 4 years of receipt of those funds or HUD will recapture and reallocate the amount of funds not expended.

3. Timely expenditure of NSP2 and NSP3 funds. The timely distribution or expenditure requirements of sections 24 CFR 570.494 and 570.902 are waived to the extent necessary to allow the following alternative requirement: NSP2 and NSP3 grantees must expend on eligible NSP activities an amount equal to or greater than the 50 percent of the initial allocation of NSP funds within 2 years of receipt of those funds and 100 percent of the initial allocation of NSP funds within 3 years of receipt of those funds or HUD will recapture and reallocate the amount of funds not expended or provide for other corrective action(s) or sanction. A grantee will be deemed by HUD to have received its

NSP grant at the time HUD signs its NSP grant agreement.

N. Alternative Requirement for Program Income (Revenue) Generated By Activities Assisted With Grant Funds

Requirement

1. Revenue (*i.e.*, gross income)

received by a state, unit of general local government, or subrecipient (as defined at 24 CFR 570.500(c)) that is directly generated from the use of CDBG funds (which term includes NSP grant funds) constitutes CDBG program income. To ensure consistency of treatment of such program income, the definition of program income at 24 CFR 570.500(a) shall be applied to amounts received by states, units of general local government, and subrecipients.

2. Cash management. Substantially all program income must be disbursed for eligible NSP activities before additional cash withdrawals are made from the U.S. Treasury.

3. Agreements with subrecipients. States and units of general local government must incorporate in subrecipient agreements such provisions as are necessary to ensure compliance with the requirements of this section.

O. Reporting

Background

HUD is requiring regular reporting on each NSP grant in the DRGR system to ensure the Department has sufficient management information to follow-up promptly if a grantee lags in implementation and risks recapture of its grant funds. For NSP, HUD is waiving the annual reporting requirements of the consolidated plan to allow HUD to collect more regular information on various aspects of the uses of funds and of the activities funded with these grants. HUD will use the reports to exercise oversight for compliance with the requirements of this notice and for prevention of fraud, waste, and abuse of funds.

The regular CDBG performance measurement requirements will not apply to the NSP funds. HUD has configured DRGR performance measures to fit the NSP activities and will provide additional guidance on NSP performance measures.

To collect these data elements and to meet its reporting requirements, HUD is requiring each grantee to report on its NSP funds to HUD using the online DRGR system, which uses a streamlined, internet-based format. HUD will use grantee reports to monitor for anomalies or performance problems that

suggest fraud, waste, and abuse of funds; to reconcile budgets, obligations, fund draws, and expenditures; to calculate applicable administrative and public service limitations and the overall percent of benefit to LMI persons; and as a basis for risk analysis in determining a monitoring plan.

The grantee must post the NSP report on a Web site for its citizens when it submits the report to HUD (DRGR generates a version of the report that the grantee can download, save, and post). The Office of Management and Budget has established October 1, 2010 as the deadline for Federal agencies to initiate sub-award reporting in compliance with the Federal Funding Accountability and Transparency Act (Pub. L. 109–282) (FFATA). NSP3 grantees will be required to comply with this additional reporting requirement. Additional HUD guidance on compliance with the FFATA requirements is forthcoming.

Requirements

1. Performance report alternative requirement. The Secretary may specify the form and timing of reports provided by the grantee under both 42 U.S.C. 5304(e) (the HCD Act) and 42 U.S.C. 12708 (NAHA). Therefore, the consolidated plan regulation at 24 CFR 91.520 is waived and the alternative reporting form and timing for the NSP funds is that:

a. Each grantee must enter its NSP Action Plan amendment or abbreviated plan into HUD's web-based DRGR system in sufficient detail to meet the NSP action plan content requirements of this notice and to serve as the basis for acceptable performance reports.

b. NSP1 and NSP3 grantees must submit a quarterly performance report, as HUD prescribes, no later than 30 days following the end of each quarter, beginning 30 days after the completion of the first full calendar quarter after grant award and continuing until the end of the grant. In addition to this quarterly performance reporting, beginning three months prior to its use or expenditure deadline, as applicable, each grantee will report monthly on its NSP use and expenditure of funds, and continuing monthly until reported total uses or expenditure of funds are equal to or greater than the total NSP grant or the deadline occurs. After HUD has accepted a report from a grantee showing such use or expenditure of funds, the monthly reporting requirement will end. Quarterly reports will continue until all NSP funds (including program income) have been expended and those expenditures are included in a report to HUD, or until HUD issues other instructions. Each

report will include information about the uses of funds, including, but not limited to, the project name, activity, location, national objective, funds budgeted and expended, the funding source and total amount of any non-NSP funds, numbers of properties and housing units, beginning and ending dates of activities, beneficiary characteristics, and numbers of low- and moderate-income persons or households benefiting. Reports must be submitted using HUD's web-based DRGR system and, at the time of submission, be posted prominently on the grantee's official Web site.

c. Additional reporting requirements consistent with the Federal Funding Accountability and Transparency Act will be required for NSP3 Grantees. HUD guidance on these requirements is forthcoming.

P. FHA First Look Program

The Department notes that it is an eligible use of NSP grant funds to acquire and redevelop FHA foreclosed properties. The Federal Housing Administration's (FHA) First Look sales method provides NSP grantees exclusive access to review and purchase newly conveyed FHA real estate-owned (REO) properties that are located in their designated areas. Grantees will have the opportunity to make a purchase offer on a property prior to it being made available to other entities. NSP grantees can purchase these properties at up to a 10% discount from the appraised value. Further information about First Look was published in the *Federal Register* on July 15, 2010 (75 FR 41225), and is also available online at: <http://edocket.access.gpo.gov/2010/pdf/2010-17335.pdf>.

HUD will provide technical assistance on its Web site regarding how these programs can effectively interact. Grantees may also contact their local HUD FHA field office for further information.

Q. Purchase Discount

Background

HERA Section 2301(d)(1) limits the purchase price of a foreclosed home or residential property, as follows: Any purchase of a foreclosed upon home shall be at a discount from the current market appraised value of the home or property, taking into account its current condition, and such discount shall ensure that purchasers are paying below-market value for the home or property.

To ensure that uncertainty over the meaning of this section does not delay program implementation, HUD is

defining "current market appraised value" in this notice. For mortgagee foreclosed properties, HUD is requiring that grantees seek to obtain the "maximum reasonable discount" from the mortgagee, taking into consideration likely "carrying costs" of the mortgagee if it were to not sell the property to the grantee or subrecipient. HUD has adopted an approach that requires a minimum discount of one percent for each foreclosed upon home or residential property purchased with NSP funds.

Requirements

1. Individual purchase transaction. Each foreclosed-upon home or residential property shall be purchased at a discount of at least one percent from the current market-appraised value of the home or property.

2. An NSP grantee may not provide NSP funds to another party to finance an acquisition of tax foreclosed (or any other) properties from itself, other than to pay necessary and reasonable costs related to the appraisal and transfer of title. If NSP funds are used to pay such costs when property owned by the grantee is conveyed to a subrecipient, homebuyer, developer, or other jurisdiction, the property is NSP-assisted and subject to all program requirements, such as requirements for NSP-eligible use and benefit to income-qualified persons. This section does not preclude payment of tax liens on property that is not owned by the grantee or payment of current taxes while the property is being redeveloped or held in a land bank.

3. The address, appraised value, purchase offer amount, and discount amount of each property purchase must be documented in the grantee's program records. The address of each acquired property must be recorded in DRGR.

R. Removal of Annual Requirements

Requirement

Throughout 24 CFR parts 91 and 570, all references to "annual" requirements such as submission of plans and reports are waived to the extent necessary to allow the provisions of this notice to apply to NSP funds, with no recurring annual requirements other than those related to civil rights and fair housing certifications and requirements.

S. Affirmatively Furthering Fair Housing

Nothing in this notice may be construed as affecting each grantee's responsibility to carry out its certification to affirmatively further fair housing. HUD encourages each grantee

to review its analysis of impediments to fair housing choice to determine whether an update is necessary because of current market conditions or other factors. Non-entitlement local government grantees must affirmatively further fair housing by adopting and following procedures and requirements to affirmatively market NSP3-assisted housing opportunities. This means that they will affirmatively market NSP3 assisted units and carry out NSP3 activities that further fair housing through innovative housing design or construction to increase access for persons with disabilities, language assistance services to persons with limited English proficiency (on the basis of national origin), or location of new or rehabilitated housing in a manner that provides greater housing choice or mobility for persons in classes protected by the Fair Housing Act, and maintain records reflecting the actions in this regard.

T. Certifications

Background

HUD is substituting alternative certifications. The alternative certifications are tailored to NSP3 grants and remove certifications and references that are appropriate only to the annual CDBG formula program. NSP1 and NSP2 certifications have already been submitted to HUD in accordance with the requirements of the NSP1 Notice and the NSP2 NOFA.

Requirements

1. *Certifications for states and for entitlement communities, alternative requirement.* Although the NSP3 is being implemented as a substantial amendment to the current annual action plan, HUD is requiring submission of this alternative set of certifications as a conforming change, reflecting alternative requirements and waivers under this notice. Each jurisdiction will submit the following certifications:

1. Affirmatively furthering fair housing. The jurisdiction certifies that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.

2. Anti-displacement and relocation plan. The applicant certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan.

3. Anti-lobbying. The jurisdiction must submit a certification with regard to compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.

4. Authority of jurisdiction. The jurisdiction certifies that the consolidated plan or abbreviated plan, as applicable, is authorized under state and local law (as applicable) and that the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations and other program requirements.

5. Consistency with plan. The jurisdiction certifies that the housing activities to be undertaken with NSP funds are consistent with its consolidated plan or abbreviated plan, as applicable.

6. Acquisition and relocation. The jurisdiction certifies that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601), and implementing regulations at 49 CFR part 24, except as those provisions are modified by the notice for the NSP program published by HUD.

7. Section 3. The jurisdiction certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

8. Citizen participation. The jurisdiction certifies that it is in full compliance and following a detailed citizen participation plan that satisfies the requirements of Sections 24 CFR 91.105 or 91.115, as modified by NSP requirements.

9. Following a plan. The jurisdiction certifies it is following a current consolidated plan (or Comprehensive Housing Affordability Strategy) that has been approved by HUD. [Only States and entitlement jurisdictions use this certification.]

10. Use of funds. The jurisdiction certifies that it will comply with the Dodd-Frank Wall Street Reform and Consumer Protection Act and Title XII of Division A of the American Recovery and Reinvestment Act of 2009 by spending 50 percent of its grant funds within 2 years, and spending 100 percent within 3 years, of receipt of the grant.

11. The jurisdiction certifies:

a. That all of the NSP funds made available to it will be used with respect to individuals and families whose

incomes do not exceed 120 percent of area median income; and

b. The jurisdiction will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108 loan guaranteed funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if NSP funds are used to pay the proportion of a fee or assessment attributable to the capital costs of public improvements (assisted in part with NSP funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. In addition, with respect to properties owned and occupied by moderate-income (but not low-income) families, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than NSP funds if the jurisdiction certifies that it lacks NSP or CDBG funds to cover the assessment.

12. Excessive force. The jurisdiction certifies that it has adopted and is enforcing:

a. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and

b. A policy of enforcing applicable state and local laws against physically barring entrance to, or exit from, a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

13. Compliance with anti-discrimination laws. The jurisdiction certifies that the NSP grant will be conducted and administered in conformity with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and implementing regulations.

14. Compliance with lead-based paint procedures. The jurisdiction certifies that its activities concerning lead-based paint will comply with the requirements of part 35, subparts A, B, J, K, and R of this title.

15. Compliance with laws. The jurisdiction certifies that it will comply with applicable laws.

2. Certifications for Non-Entitlement Local Governments, alternative requirement.

For non-entitlement local government grantees that do not have annual action plans to amend, NSP3 is being implemented through the submission of

an abbreviated plan under 25 CFR 91.235. HUD is requiring submission of this alternative set of certifications as a conforming change, reflecting alternative requirements and waivers under this notice. Each jurisdiction will submit the following certifications:

1. Affirmatively furthering fair housing. The jurisdiction certifies that it will affirmatively further fair housing.

2. Anti-displacement and relocation plan. The applicant certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan.

3. Anti-lobbying. The jurisdiction must submit a certification with regard to compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.

4. Authority of jurisdiction. The jurisdiction certifies that the consolidated plan or abbreviated plan, as applicable, is authorized under state and local law (as applicable) and that the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations and other program requirements.

5. Consistency with plan. The jurisdiction certifies that the housing activities to be undertaken with NSP funds are consistent with its consolidated plan or abbreviated plan, as applicable.

6. Acquisition and relocation. The jurisdiction certifies that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601), and implementing regulations at 49 CFR part 24, except as those provisions are modified by the notice for the NSP program published by HUD.

7. Section 3. The jurisdiction certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

8. Citizen participation. The jurisdiction certifies that it is in full compliance and following a detailed citizen participation plan that satisfies the requirements of Sections 24 CFR 91.105 or 91.115, as modified by NSP requirements.

9. Use of funds. The jurisdiction certifies that it will comply with the Dodd-Frank Wall Street Reform and Consumer Protection Act and Title XII of Division A of the American Recovery and Reinvestment Act of 2009 by spending 50 percent of its grant funds

within 2 years, and spending 100 percent within 3 years, of receipt of the grant.

10. The jurisdiction certifies:

a. That all of the NSP funds made available to it will be used with respect to individuals and families whose incomes do not exceed 120 percent of area median income; and

b. The jurisdiction will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108 loan guaranteed funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if NSP funds are used to pay the proportion of a fee or assessment attributable to the capital costs of public improvements (assisted in part with NSP funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. In addition, with respect to properties owned and occupied by moderate-income (but not low-income) families, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than NSP funds if the jurisdiction certifies that it lacks NSP or CDBG funds to cover the assessment.

11. Excessive force. The jurisdiction certifies that it has adopted and is enforcing:

a. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and

b. A policy of enforcing applicable state and local laws against physically barring entrance to, or exit from, a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

12. Compliance with anti-discrimination laws. The jurisdiction certifies that the NSP grant will be conducted and administered in conformity with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and implementing regulations.

13. Compliance with lead-based paint procedures. The jurisdiction certifies that its activities concerning lead-based paint will comply with the requirements of part 35, subparts A, B, J, K, and R of this title.

14. Compliance with laws. The jurisdiction certifies that it will comply with applicable laws.

U. Additional NSP3 Requirements—Preferences for Rental Housing and Local Hiring

The NSP3 allocation included statutory language requiring grantees to “establish procedures to create preferences for the development of affordable rental housing for properties assisted with NSP3 funds.” HUD is requiring grantees to describe such procedures as part of their substantial amendments or abbreviated plans as described in Section II.B. above.

Grantees also “shall, to the maximum extent feasible, provide for the hiring of employees who reside in the vicinity, as such term is defined by the Secretary, of projects funded under this section or contract with small businesses that are owned and operated by persons residing in the vicinity of such projects.” For the purposes of administering this requirement, HUD is adopting the Section 3 applicability thresholds for community development assistance at 24 CFR 135.3(a)(3)(ii). **Note:** The NSP3 local hiring requirement does not replace the responsibilities of grantees under Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135, except to the extent the obligations may be in direct conflict.

For the purposes of NSP3, HUD defines “vicinity” as each neighborhood identified by the NSP3 grantee as being the areas of greatest need. *See* section II.B.2. Small business means a business that meets the criteria set forth in section 3(a) of the Small Business Act. *See* 42 U.S.C. 5302(a)(23).

V. Note on Statutory Limitation on Distribution of Funds

Section 2304 of HERA and 1479(a)(7)(A) of the Dodd-Frank Act states that none of the funds made available under this Title or title IV shall be distributed to an organization that has been convicted of a violation under Federal law relating to an election

for Federal office; or an organization that employs applicable individuals. Section 1479(a)(7)(B) defines applicable individuals.

W. Information Collection Approval Note

HUD has approval from the Office of Management and Budget (OMB) for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). OMB approval is under OMB control number 2506–0165. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor and a person is not required to respond to, a collection of information, unless the collection displays a valid control number.

X. Duration of Funding

The appropriation accounting provisions in 31 U.S.C. 1551–1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510), limit the availability of certain appropriations for expenditure. Such a limitation may not be waived. The appropriations acts for NSP1 and NSP3 grants direct that these funds be available until expended.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for grants made under NSP are as follows: 14.218; 14.225; and 14.228.

Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)(2)). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451

Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Establishment of Formula

The funding formula set out in Attachment B to this notice was established by HUD on August 18, 2010.

Dated: October 13, 2010.

Mercedes M. Márquez,

Assistant Secretary for Community Planning and Development.

Attachments

A—Formula Allocation
B—NSP3 Formula and Allocation of Funds
C—Recommended Green and Sustainable Practices

Attachment A

HUD's Methodology for Allocating the Funds for Neighborhood Stabilization Program 1 (NSP1)

HERA calls for allocating funds “to States and units of general local government with the greatest need, as such need is determined in the discretion of the Secretary based on—

(A) The number and percentage of home foreclosures in each State or unit of general local government;

(B) the number and percentage of homes financed by a subprime mortgage related loan in each State or unit of general local government; and

(C) the number and percentage of homes in default or delinquency in each State or unit of general local government.”

It further directs that “each State shall receive not less than 0.5 percent of funds”. The allocation formula operates as follows. In this formula, the primary data on foreclosure rates, subprime loan rates, and rates of loans delinquent or in default come from the Mortgage Bankers Association National Delinquency Survey (MBA–NDS). Because the MBA–NDS may have uneven coverage from state-to-state in respect to the total number of mortgages reported, the total count of mortgages is calculated as the number of owner-occupied mortgages from the 2006 American Community Survey increased with data from the Home Mortgage Disclosure Act to capture the proportion of total mortgages made within a state made to investors between 2004 and 2006. The first step of the allocation is to make a “statewide” allocation using the following formula:

Statewide Allocation = \$3.92 billion *

{[0.70 * (State's number of foreclosure starts in last 6 quarters) *]

National number of foreclosure starts in last 6 quarters]

0.15 * (State's number of subprime loans) *]

National number of subprime loans]

0.10 * (State's number of loans in default (90+ days delinquent). *]

National number of loans in default]

0.05 * (State's number of loans 60 to 89 days delinquent). *]

National number of loans 60 to 89 days delinquent]

(Percent of all loans in state to enter foreclosure last 6 quarters)+

Percent of all loans in nation to enter foreclosure last 6 quarters

(Percent of all loans in state subprime)+

Percent of all loans in nation subprime

(Percent of all loans in state in default)+

Percent of all loans in nation in default

Percent of all loans in state 60 to 89 days delinquent)] *

National percent of all loans 60 to 89 days delinquent

(Pct of all addresses in state vacant in Census Tracts where more than 40% of the 2004 to 2006 loans were high cost)}

Pct of all addresses in nation vacant in Census Tracts where more than 40% of the 2004 to 2006 loans were high cost

This formula allocates 70 percent of the funds based on the number and percent of foreclosures, 15 percent for subprime loans, 10 percent for loans in default (delinquent 90 days or longer), and 5 percent for loans delinquent 60 to 90 days. The higher weight on foreclosures is based on the emphasis the statute places on targeting foreclosed homes. The percentage adjustments, the rate of a problem in a state relative to the national rate of a problem, are restricted such that a state's allocation based on its proportional share of a problem cannot be increased or decreased by more than 30 percent.

Because HERA specifically indicates that the funds are needed for the "redevelopment of abandoned and foreclosed upon homes and residential properties," HUD has included a variable to proxy where abandonment of homes due to foreclosure is more likely, specifically each state's rate of vacant residential addresses in neighborhoods with a high proportion (more than 40 percent) of loans in 2004 to 2006 that were high cost. Information on vacant addresses is based on United States Postal Service data as of June 30, 2008 aggregated by HUD to the Census Tract level. The residential vacancy adjustment factor reflects

a state's vacancy rate relative to the national average and cannot increase or decrease a state's proportional share of the allocation based on foreclosures, subprime loans, and delinquencies and defaults by more than 10 percent.

Finally, if a statewide allocation is less than \$19.6 million, the statewide grant is increased to \$19.6 million. Because this approach will result in a total allocation in excess of appropriation, all grant amounts above \$19.6 million are reduced pro-rata to make the total allocation equal to the total appropriation.

From each statewide allocation, a substate allocation is made as follows:

- Each state government is allocated \$19.6 million
- If the statewide allocation is more than \$19.6 million, the remaining funds are allocated to FY 2008 CDBG entitlement cities, urban counties, and non-entitlement balance of state proportional to relative need.
- If a local government receives less than \$2 million under this sub-allocation, their grant is rolled up into the state government grant.

Note that HUD has determined that HERA's direction that a minimum of \$19.6

million be allocated to the state means that a minimum grant must be provided to each state government of \$19.6 million. As a result, this approach provides state governments with proportionally more funding than their estimated need. As such, state governments should use their best judgment to serve both those areas not receiving a direct grant and those areas that do receive a direct grant, making sure that the total of all funds in the state are going proportionally more to those places (as prescribed by HERA):

- "With the greatest percentage of home foreclosures;
- With the highest percentage of homes financed by a subprime mortgage related loan; and
- Identified by the State or unit of general local government as likely to face a significant rise in the rate of home foreclosures."

For the amount of funds above each state's \$19.6 million, the remaining funds are allocated among the entitlement communities and non-entitlement balances using the following formula:

$$\text{Local Allocation} = (\text{Statewide Allocation} - \$19,600,000) * \\ \left(\frac{\text{Local estimated number of foreclosure starts in last 6 quarters} * \text{State total number of foreclosure starts in last 6 quarters} * \text{Local vacancy rate in Census Tracts with more than 40\% of the loans High-cost}}{\text{State vacancy rate in Census Tracts with more than 40\% of the loans High-cost}} \right)$$

Where: The residential vacancy rate adjustment cannot increase or reduce a local jurisdiction's allocation by more than 30 percent and the estimated number of foreclosures is calculated based on a predicted foreclosure rate times the estimated number of mortgages in a community.

HUD analysis shows that 75 percent of the variance between states on foreclosure rates can be explained by three variables available from public data:

- Office of Federal Housing Enterprise Oversight (OFHEO) data on change in home values as of June 2008 compared to peak home value since 2000.
- Percent of all loans made between 2004 and 2006 that are high cost as reported in the Home Mortgage Disclosure Act (HMDA).
- Unemployment rate as of June 2008 (from Bureau of Labor Statistics).

Because these three variables are publicly available for all CDBG eligible communities and they are good predictors of foreclosure risk, they are used in a model to calculate the

estimated number of foreclosures in each jurisdiction within a state. The formula used is as follows:

$$\text{Predicted Foreclosure Rate} = -2.211 \\ - (0.131 * \text{Percent change in MSA OFHEO current price relative to the maximum in past 8 years}) \\ + (0.152 * \text{Percent of total loans made between 2004 and 2006 that are high cost}) \\ + (0.392 * \text{Percent unemployed in the place our county in June 2008}).$$

This predicted foreclosure rate is then multiplied times the estimated number of mortgages within a jurisdiction (number of HMDA loans made between 2004 and 2006 times the ratio of ACS 2006 data on total mortgages in state/HMDA loans in state). This "estimated number of mortgages in the jurisdiction" is further adjusted such that the estimated number of foreclosures from the model will equal the total foreclosure starts in the state from the Mortgage Bankers Association National Delinquency Survey.

As noted above, for entitlement cities and urban counties that would receive an NSP allocation of less than \$2 million, the funds are allocated to the state grantee. The District of Columbia and the four Insular Areas receive direct allocations and are not subject to the minimum grant threshold.

Because this funding is one-time funding and the eligible activities under the program are different enough from the regular program, HUD believes that a grantee must receive a minimum amount of \$2 million to have adequate staffing to properly administer the program effectively. In addition, fewer grants will allow HUD staff to more effectively monitor grantees to ensure proper implementation of the program and reduce the risk for fraud, waste, and abuse.

Attachment B

HUD's Methodology for Allocating the Funds for Neighborhood Stabilization Program 3 (NSP3)

NEIGHBORHOOD STABILIZATION PROGRAM (NSP3) FUNDING UNDER DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

State	Grantee	NSP3 Grant
Alaska	State of Alaska	\$5,000,000
Alabama	State of Alabama	5,000,000
	Birmingham	2,576,151
	Alabama Total	7,576,151
Arkansas	State of Arkansas	5,000,000
Arizona	Avondale City	1,224,903
	State of Arizona	5,000,000

**NEIGHBORHOOD STABILIZATION PROGRAM (NSP3) FUNDING UNDER DODD-FRANK WALL STREET REFORM AND
CONSUMER PROTECTION ACT—Continued**

State	Grantee	NSP3 Grant
California	Chandler	1,332,011
	Glendale	3,718,377
	Maricopa County	4,257,346
	Mesa	4,019,457
	Mohave County	1,990,744
	Peoria City	1,198,780
	Phoenix	16,053,525
	Pinal County	3,168,315
	Surprise City	1,329,844
	Tucson	2,083,771
	Arizona Total	45,377,073
	Apple Valley	1,463,014
	Bakersfield	3,320,927
	State of California	7,777,019
	Compton	1,436,300
	Contra Costa County	1,871,294
	Corona	1,317,310
	Fontana	2,695,735
	Fresno	3,547,219
	Fresno County	2,739,766
	Hemet	1,360,197
	Hesperia	1,785,047
	Imperial County	1,708,780
	Indio City	1,092,071
	Kern County	5,202,037
	Lancaster	2,364,566
	Long Beach	1,567,935
	Los Angeles	9,875,577
	Los Angeles County	9,532,569
	Madera County	1,659,017
	Merced	1,196,182
	Merced County	2,705,877
	Modesto	2,951,549
	Monterey County	1,284,794
	Moreno Valley	3,687,789
	Oakland	2,070,087
	Ontario	1,872,853
	Orange County	1,004,948
	Palmdale	2,310,023
	Perris City	1,342,449
	Pomona	1,235,629
	Rialto	1,936,370
	Richmond	1,153,172
	Riverside	3,202,152
	Riverside County	14,272,400
	Sacramento	3,762,329
	Sacramento County	4,595,671
	San Bernardino	3,277,401
	San Bernardino County	10,438,181
	San Joaquin County	4,398,543
	Santa Ana	1,464,113
	Solano County	1,622,757
	Stanislaus County	4,175,947
	Stockton	4,280,994
	Tulare County	2,845,529
	Vallejo	1,744,593
	Victorville	2,159,937
Colorado	California Total	149,308,651
	Adams County	1,997,322
	Aurora	2,445,282
	State of Colorado	5,098,309
	Colorado Springs	1,420,638
	Denver	2,700,279
	Greeley	1,203,745
	Pueblo	1,460,506
Connecticut	Weld County	1,023,188
	Colorado Total	17,349,270
	Bridgeport	1,215,150

**NEIGHBORHOOD STABILIZATION PROGRAM (NSP3) FUNDING UNDER DODD-FRANK WALL STREET REFORM AND
CONSUMER PROTECTION ACT—Continued**

State	Grantee	NSP3 Grant
	State of Connecticut	5,000,000
	Hartford	1,029,926
	New Haven	1,041,579
	Waterbury	1,036,101
	Connecticut Total	9,322,756
District of Columbia	Washington, DC	5,000,000
Delaware	State of Delaware	5,000,000
Florida	Boynton Beach	1,168,808
	Brevard County	3,032,850
	Broward County	5,457,553
	Cape Coral	3,048,214
	Charlotte County	2,022,962
	Citrus County	1,005,084
	Clearwater	1,385,801
	Collier County	3,884,165
	Coral Springs	1,657,845
	Davie	1,171,166
	Daytona Beach	1,127,616
	Deerfield Beach	1,183,897
	Deltona	1,964,066
	Escambia County	1,210,487
	State of Florida	8,511,111
	Ft Lauderdale	2,145,921
	Ft Myers	1,539,941
	Hernando County	1,953,975
	Hialeah	2,198,194
	Hillsborough County	8,083,062
	Hollywood	2,433,001
	Indian River County	1,500,428
	Jacksonville-Duval County	7,102,937
	Kissimmee	1,042,299
	Lake County	3,199,585
	Lakeland	1,303,139
	Lauderhill	1,500,609
	Lee County	6,639,174
	Manatee County	3,321,893
	Margate	1,148,877
	Marion County	4,589,714
	Martin County	1,563,770
	Melbourne	1,257,986
	Miami	4,558,939
	Miami Beach	1,475,088
	Miami Gardens City	1,940,337
	Miami-Dade County	20,036,303
	Miramar	2,321,827
	North Miami	1,173,374
	Orange County	11,551,158
	Orlando	3,095,137
	Osceola County	3,239,646
	Palm Bay	1,764,032
	Palm Beach County	11,264,172
	Palm Coast City	1,375,071
	Pasco County	5,185,778
	Pembroke Pines	2,330,542
	Pinellas County	4,697,519
	Plantation	1,216,427
	Polk County	5,443,116
	Pompano Beach	1,500,572
	Port St Lucie	3,515,509
	Sanford	1,037,697
	Sarasota	1,038,811
	Sarasota County	3,949,541
	Seminole County	3,995,178
	St Petersburg	3,709,133
	St. Lucie County	1,947,657
	Sunrise	1,775,162
	Tamarac	1,427,857
	Tampa	4,691,857
	Titusville	1,005,731
	Volusia County	3,670,516

NEIGHBORHOOD STABILIZATION PROGRAM (NSP3) FUNDING UNDER DODD-FRANK WALL STREET REFORM AND
CONSUMER PROTECTION ACT—Continued

State	Grantee	NSP3 Grant
	West Palm Beach	2,147,327
	Florida Total	208,437,144
Georgia	Atlanta	4,906,758
	Augusta-Richmond County	1,161,297
	Carroll County	1,190,390
	Clayton County	3,796,167
	Cobb County	2,415,784
	Columbus-Muscogee County	1,128,174
	Dekalb County	5,233,105
	Douglas County	1,628,471
	Fulton County	3,094,885
	State of Georgia	18,679,977
	Gwinnett County	2,065,581
	Henry County	1,217,736
	Macon	1,503,897
	Paulding County	1,372,214
	Savannah	1,027,553
	Georgia Total	50,421,988
Hawaii	State of Hawaii	5,000,000
Iowa	State of Iowa	5,000,000
Idaho	State of Idaho	5,000,000
Illinois	Chicago	15,996,360
	Cook County	7,776,324
	State of Illinois	5,000,000
	Lake County	1,370,421
	Illinois Total	30,143,105
Indiana	Anderson	1,219,200
	Elkhart	1,022,717
	Elkhart County	1,193,194
	Fort Wayne	2,374,450
	Gary	2,717,859
	Hammond	1,243,934
	State of Indiana	8,235,625
	Indianapolis	8,017,557
	Kokomo	1,014,327
	Lake County	1,613,168
	Muncie	1,148,363
	South Bend	1,708,707
	Indiana Total	31,509,101
Kansas	Kansas City	1,137,796
	State of Kansas	5,000,000
	Kansas Total	6,137,796
Kentucky	Commonwealth of Kentucky	5,000,000
Louisiana	State of Louisiana	5,000,000
Massachusetts	Commonwealth of Massachusetts	5,000,000
	Springfield	1,197,000
	Worcester County	1,190,994
	Massachusetts Total	7,387,994
Maryland	State of Maryland	5,000,000
	Prince George's County	1,802,242
	Maryland Total	6,802,242
Maine	State of Maine	5,000,000
Michigan	Dearborn	1,027,354
	Detroit	21,922,710
	Flint	3,076,522
	Genesee County	2,663,219
	Grand Rapids	1,378,788
	Jackson County	1,162,482
	Lansing	1,162,508
	Macomb County	2,536,817
	State of Michigan	5,000,000
	Muskegon County	1,071,900
	Oakland County	2,080,700
	Pontiac	1,410,621

**NEIGHBORHOOD STABILIZATION PROGRAM (NSP3) FUNDING UNDER DODD-FRANK WALL STREET REFORM AND
CONSUMER PROTECTION ACT—Continued**

State	Grantee	NSP3 Grant
Minnesota	Saginaw	1,242,318
	Southfield	1,084,254
	St. Clair County	1,129,355
	Warren	1,735,633
	Wayne County	7,839,293
	Michigan Total	57,524,473
	Anoka County	1,226,827
	Hennepin County	1,469,133
	Minneapolis	2,671,275
	State of Minnesota	5,000,000
Missouri	St Paul	2,059,877
	Minnesota Total	12,427,113
	Kansas City	1,823,888
	State of Missouri	5,000,000
	St Louis	3,472,954
Mississippi	St. Louis County	2,813,762
	Missouri Total	13,110,604
	State of Mississippi	5,000,000
	State of Montana	5,000,000
	State of North Carolina	5,000,000
Montana	State of North Dakota	5,000,000
	State of Nebraska	5,000,000
	Omaha	1,183,085
Nebraska	Nebraska Total	6,183,085
	State of New Hampshire	5,000,000
	Essex County	1,851,984
	Newark	2,018,637
	State of New Jersey	5,000,000
New Hampshire	Paterson	1,196,877
	Union County	1,574,051
	New Jersey Total	11,641,549
	State of New Mexico	5,000,000
	Clark County	16,156,114
New Mexico	North Las Vegas	4,097,147
	Henderson	3,901,144
	Las Vegas	10,450,623
	State of Nevada	5,000,000
	Reno	1,973,724
Nevada	Washoe County	1,735,918
	Nevada Total	43,314,669
	Islip Town	1,429,561
	Nassau County	2,116,070
	New York	9,787,803
New York	State of New York	5,000,000
	Suffolk County	1,501,506
	New York Total	19,834,940
	Akron	2,674,298
	Butler County	1,327,123
Ohio	Canton	1,233,756
	Cincinnati	3,160,661
	Clark County	1,105,306
	Cleveland	6,793,290
	Columbus	4,843,460
	Cuyahoga County	2,551,533
	Dayton	3,115,780
	East Cleveland	1,068,142
	Euclid	1,031,230
	Hamilton County	1,469,242
	Lorain County	1,619,474
	Montgomery County	1,145,712
	State of Ohio	11,795,818
	Richland County	1,022,278
	Toledo	3,591,715
	Trumbull County	1,143,889

**NEIGHBORHOOD STABILIZATION PROGRAM (NSP3) FUNDING UNDER DODD-FRANK WALL STREET REFORM AND
CONSUMER PROTECTION ACT—Continued**

State	Grantee	NSP3 Grant
	Youngstown	1,096,328
	Ohio Total	51,789,035
Oklahoma	State of Oklahoma	5,000,000
Oregon	State of Oregon	5,000,000
Pennsylvania	Commonwealth of Pennsylvania	5,000,000
Puerto Rico	Commonwealth of Puerto Rico	5,000,000
Rhode Island	Providence	1,309,231
	State of Rhode Island	5,000,000
	Rhode Island Total	6,309,231
South Carolina	State of South Carolina	5,615,020
	South Carolina Total	5,615,020
South Dakota	State of South Dakota	5,000,000
Tennessee	Memphis	5,195,848
	State of Tennessee	5,000,000
	Tennessee Total	10,195,848
Texas	Dallas	2,356,962
	Dallas County	1,364,426
	Harris County	1,925,917
	Hidalgo County	1,716,924
	Houston	3,389,035
	State of Texas	7,284,978
	Texas Total	18,038,242
Utah	State of Utah	5,000,000
Virginia	Richmond	1,254,970
	Commonwealth of Virginia	5,000,000
	Virginia Total	6,254,970
Vermont	State of Vermont	5,000,000
Washington	State of Washington	5,000,000
Wisconsin	Milwaukee	2,687,949
	State of Wisconsin	5,000,000
	Wisconsin Total	7,687,949
West Virginia	State of West Virginia	5,000,000
Wyoming	State of Wyoming	5,000,000
Insular Areas		300,000
	Total	970,000,000

Overview

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 provided an additional \$1 billion for the Neighborhood Stabilization Program (NSP) that was originally established under the Housing and Economic Recovery Act of 2008.

The statute calls for allocating funds to States and local governments with the greatest need, as determined by:

(A) "The number and percentage of home foreclosures in each State or unit of general local government;

(B) "The number and percentage of homes financed by a subprime mortgage in each State or unit of general local government; and

(C) "The number and percentage of homes in default or delinquency in each State or unit of general local government."

The statute also requires that a minimum of 0.5 percent of the appropriation, \$5 million be provided to each state.

The Department has determined that for NSP3, the states and local governments with the greatest need for neighborhood

stabilization funding are those communities that have high numbers of foreclosed and/or vacant properties in the neighborhoods with the highest concentrations of foreclosures, delinquent loans, and subprime loans. The basic formula allocates funds based on the number of foreclosures and vacancies in the 20 percent of U.S. neighborhoods (Census Tracts) with the highest rates of homes financed by a subprime mortgage, are delinquent, or are in foreclosure. This basic allocation is adjusted to ensure that every state receives a minimum of \$5 million. The net result is that these funds are highly targeted to communities with the most severe neighborhood problems associated with the foreclosure crisis.

Estimating Greatest Need

To target the funds to States and local communities with the greatest need, HUD estimated the number of loans 90 days delinquent or in foreclosure for each Census Tract in America. This estimate was based on a model that was comprised of three factors

that explain most foreclosures and delinquent loans (*see* note 1):

- Rate of Subprime Loans. This is measured with HMDA data on high cost and high leverage loans made between 2004 and 2007. These data are available at the Census Tract (neighborhood) level.
- Increase in Unemployment Rate between March 2005 and March 2010. These data are from the BLS Local Area Unemployment Statistics, at the city and county level.
- Fall in Home Value from Peak to Trough. Home value data at the Metropolitan Area level is available quarterly through March 2010 from the Federal Housing Finance Agency Home Price Index.

In addition to wanting to capture loans that are currently delinquent or in the foreclosure process, HUD sought to capture the aggregate impact of the foreclosure crisis on individual neighborhoods between 2007 and 2010. To do this, HUD estimated for each neighborhood the number of foreclosure starts between January 2007 and March 2010 as well as the number of foreclosure

completions between January 2007 and June 2010 (*see* note 2). Each neighborhood was assigned the larger of the two estimates.

Finally, HUD has administrative data from the United States Postal Service on addresses not picking up mail for 90 days or longer. These data are very good current indicators of neighborhood stress from vacant housing. This number is adjusted using Census 2000 tract level data to remove vacant vacation properties from the count.

The Formula

Using the estimated rate of loans in foreclosure or delinquent, HUD identified the 20 percent of neighborhoods likely to be most distressed. This equates to an estimated serious delinquency rate (90 days delinquent or in foreclosure) of greater than 17.8 percent. Using the methodology described above, the national rate was estimated at 8.9 percent.¹

For each place and balance of county in the United States we add up only from the 20 percent of neighborhoods with the greatest need the number of foreclosed homes between 2007 and 2010 and separately the number units 90 days or more vacant in March 2010.

This "jurisdiction level" file is then used to run a formula to allocate the funds available, \$969,700,000. Sixty percent of these funds are allocated based on each jurisdiction's share of foreclosures and 40 percent of the funds are allocated based on each jurisdiction's share of vacancies.

Minimum Grant Threshold

If a place gets less than HUD's established minimum grant threshold of \$1 million, its grant is rolled up into the county grant. If the county grant is less than the minimum grant threshold of \$1 million, its grant is rolled up into the state grant.

State Minimum Grant of \$5 million

For any state government that would receive less than \$5 million, its grant is increased to \$5 million with all grant amounts above the minimum grant threshold reduced on a pro-rata basis to only allocate the amounts available.

Note 1: Identifying Census Tracts with High Rates of Foreclosures, Delinquencies, and Subprime Loans:

To estimate which neighborhoods are likely to have high rates of foreclosures, delinquencies, and subprime loans, HUD used a July 2010 extract of county level serious delinquency rates from McDash Analytics to develop a predictive model using public data that was available for every Census Tract in the United States. The predictive model, which was weighted on number of mortgages in each county, was able to predict most of the variance between counties in their serious delinquency rate (R^2 of 0.821). The model used is as follows:

0.523 (intercept)
+0.476 Unemployment Change 3/2005 to 3/2010 (BLS LAUS)

–0.176 Rate of low cost high leverage loans 2004 to 2007 (HMDA)
+0.521 Rate of high cost high leverage loans 2004 to 2007 (HMDA)
+0.090 Rate of high cost low leverage loans 2004 to 2007 (HMDA)
–0.188 Fall in Home Value Since Peak (FHFA Metro and Non-Metro Area)

The predictive rate of seriously delinquent mortgages was multiplied times the number of loans made between 2004 and 2007 in a Census Tract to estimate the number of seriously delinquent loans in a Census Tract.

Note 2: Calculating Number of Foreclosures at the Neighborhood Level:

To estimate the number of homes in a neighborhood that have completed, or are at risk of becoming Real Estate Owned in a Census Tract, was done by allocating the statewide total of the greater of the sum of all foreclosure completions between January 2007 and June 2010 (from RealtyTrac) or the sum of all foreclosure starts between January 2007 and March 2010 (from the Mortgage Bankers Association) based on each Tracts share of a states estimated number of seriously delinquent loans. The estimated number of seriously delinquent loans was calculated by multiplying the estimated rate of seriously delinquent loans times the number of mortgages made between 2004 and 2007 (from Home Mortgage Disclosure Act data).

Attachment C

NSP Recommended Energy Efficient and Environmentally-Friendly Green Elements

HUD strongly recommends that your proposed NSP3 program incorporate the following energy efficient and environmentally-friendly Green elements. No specific element is required. HUD encourages thoughtful, achievable consideration and implementation of energy efficient and environmentally friendly elements inside your NSP3 program.

HUD is providing the guidance below because the Department has become aware during the implementation of NSP1 that many grantees are not aware that many of their common community development practices, such as trying to help police and teachers live in the neighborhood in which they work, are also considered sustainable and environmentally friendly. Similarly, most affordable housing units are also smaller and can easily be made more energy efficient than larger units. The increased energy efficiency then serves to increase the long-term affordability of the units.

Transit Accessibility

Select NSP target areas that are transit accessible, for example those that are in a census tract with convenient bus service (local bus service every 20 minutes during rush hour or an express commuter bus); or bordering a census tract with a passenger rail stop or station (including, for example, commuter rail, subway, light rail, and streetcars).

Green Building Standards

Comply with the required NSP rehabilitation standards and also fund new construction and gut rehabilitation activities

that will exceed the Energy Star for New Homes standard. Ensure that moderate rehabilitation or energy retrofits will purchase only Energy Star products and appliances. You may go further and require NSP homes to achieve an established environmental or energy efficiency standard such as Green Communities or equivalent.

Re-Use Cleared Sites

Re-use cleared sites in accordance with a comprehensive or neighborhood plan. Plan to re-use all demolition sites within the term of your NSP grant as replacement housing, for use as a community resource, or to provide an environmental function. Examples include community gardens, pocket parks, or floodplain impoundment areas.

Deconstruction

Deconstruction means salvaging and re-using materials resulting from demolition activities. It recycles building materials, and provides employment.

Renewable Energy

1. *Passive Solar.* Orient the building to make the greatest use of passive solar heating and cooling.
2. *Photovoltaic-ready.* Site, design, engineer and wire the development to accommodate installation of photovoltaic panels in the future.

Sustainable Site Design

1. *Transportation Choices.* Locate projects within a one-quarter mile of at least two, or one-half mile of at least four community and retail facilities.
2. *Connections to Surrounding Neighborhoods.* Provide three separate connections from the development to sidewalks or pathways in surrounding neighborhoods.
3. *Protecting Environmental Resources.* Do not locate the project within 100 feet of wetlands; 1,000 feet of a critical habitat; or on steep slopes, prime farmland or park land.
4. *Erosion and Sediment Control.* Implement EPA's Best Management Practices for erosion and sedimentation control during construction.
5. *Sustainable Landscaping.* Select native trees and plants that are appropriate to the site's soils and microclimate.
6. *Energy Efficient Landscaping.* Locate trees and plants to provide shading in the summer and allow for heat gain in the winter.

Water Conservation

1. *Efficient Irrigation.* Install low volume, non-spray irrigation system (such as drip irrigation, bubblers, or soaker hose).

Energy Efficient Materials

1. *Durable Materials.* Use materials that last longer than conventional counterparts such as stone, brick or concrete.
2. *Resource Efficient Materials.* Use layouts and advanced building techniques that reduce the amount of homebuilding material required.
3. *Heat Absorbing Materials.* Use materials that retain solar heat in winter and remain cool in summer.
4. *Solar-Reflective Paving.* Use light-colored/high-albedo materials and/or open-

¹ This less than the Mortgage Bankers Association National Delinquency Survey rate of 9.54 percent for March 2010 and slightly more than the McDash Analytics rate of 8.39 percent as of July 2010.

grid pavement with a minimum Solar Reflective index of 0.6 over at least 30 percent of the site's hardscaped areas.

5. *Local Source Materials.* Use materials from local sources that are close to the job site.

6. *Green Roofing.* Use Energy Star-compliant and high-emissive roofing, and/or install a Green (vegetated) roof for at least 50 percent of the roof area; or a combination of high-albedo and vegetated roof covering 75 percent of the roof area.

Healthy Homes

1. *Green Label Certified Floor Covering.* Do not install carpets in basements, entryways, laundry rooms, bathrooms or kitchens; if using carpet, use the Carpet and Rug Institute's Green Label certified carpet and pad.

2. *Healthy Flooring Materials: Alternatives.* Use non-vinyl, non-carpet floor coverings in all rooms.

3. *Healthy Flooring Materials: Reducing Dust.* Install a whole-house vacuum system with high-efficiency particulate air filtration.

4. *Sealing Joints.* Seal all wall, floor and joint penetrations to prevent pest entry; provide rodent and corrosion proof screens (e.g., copper or stainless steel mesh) for large openings.

5. *Termite-Resistant Materials.* Use termite-resistant materials in areas known to be infested.

6. *Tub and Shower Enclosures: Moisture Prevention.* Use one-piece fiberglass or similar enclosure or, if using any form of grouted material, use backing materials such as cement board, fiber cement board, fiberglass reinforced board or cement plaster.

7. *Green Maintenance Guide.* Provide a guide for homeowners and renters that explains the intent, benefits, use and maintenance of Green building features, and encourages additional Green activities such as recycling, gardening and use of healthy cleaning materials.

8. *Resident Orientation.* Provide a walk-through and orientation to the homeowner or new tenants.

[FR Doc. 2010-26292 Filed 10-18-10; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[Docket No. BOEM-2010-0052]

BOEMRE Information Collection Activity: 1010-0182, Increased Safety Measures for Energy Development on the OCS NTL, Extension of a Collection; Comment Request

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice of an extension of an information collection (1010-0182).

SUMMARY: To comply with the Paperwork Reduction Act of 1995

(PRA), BOEMRE is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in Notice to Lessees and Operators (NTL) "No. 2010-N05, Increased Safety Measures for Energy Development on the OCS."

DATES: Submit written comments by December 20, 2010.

FOR FURTHER INFORMATION CONTACT:

Cheryl Blundon, Regulations and Standards Branch at (703) 787-1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of NTL No. 2010-N05 that requires the subject collection of information.

ADDRESSES: You may submit comments by either of the following methods listed below.

- *Electronically:* go to <http://www.regulations.gov>. In the entry titled "Enter Keyword or ID," enter docket ID BOEM-2010-0052 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this collection. BOEMRE will post all comments.

- *E-mail* cheryl.blundon@boemre.gov. Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Cheryl Blundon; 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please reference ICR 1010-0182 in your comment and include your name and return address.

SUPPLEMENTARY INFORMATION:

Title: Increased Safety Measures for Energy Development on the OCS, NTL No. 2010-N05.

OMB Control Number: 1010-0182.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to manage the mineral resources of the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-use and easement, and pipeline right-of-way. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; preserve and maintain free enterprise

competition; and ensure that the extent of oil and natural gas resources of the OCS is assessed at the earliest practicable time. 43 U.S.C. 1332(6) states that "operations in the outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health."

To carry out these responsibilities, BOEMRE issues regulations to ensure that operations in the OCS will meet statutory requirements; provide for safety and protect the environment; and result in diligent exploration, development, and production of OCS leases. In addition, we also issue NTLs that provide clarification, explanation, and interpretation of our regulations. These NTLs are also used to convey purely informational material and to cover situations that might not be adequately addressed in our regulations. The latter is the case for the information collection required in the NTL. Because of the unusual nature of this information collection, issuing an NTL is the appropriate means to collect the information at the time of the event.

The subject of this ICR is an NTL based on the recommendations in the May 27, 2010, Report from the Secretary of the Interior to the President of the United States, *Increased Safety Measures for Energy Development on the Outer Continental Shelf* (Report). BOEMRE issued NTLs for operators to comply with the requirements and recommendations of the report as a result of the Deepwater Horizon oil spill in the Gulf of Mexico. This collection pertains to one NTL, covered under the regulations at 30 CFR part 250, subparts, A, D, E, and F. The primary information collections for these regulations are approved under the Office of Management and Budget (OMB) Control Numbers 1010-0114, 1010-0141, 1010-0067, and 1010-0043, respectively. However, BOEMRE believes that the paperwork burdens in the NTL are in addition to those currently approved. Only one of the requirements in the NTL has not yet been fully met; therefore, we are renewing that requirement in this collection to allow operators and/or lessees more response time than allowed by the original emergency OMB request.

BOEMRE issued this NTL for lessees and operators to comply with the requirements and recommendations of

